

# Maine's Electricity Ballot Question Faces Legal Snags if Passed

By Drew Hutchinson 2023-10-30T05:30:03000-04:00

- State initiative could dissolve investor owned utilities
- Voter approval could lead to a decade of litigation

A bid to replace Maine's two largest electric companies with a consumer-owned utility would likely face years of legal disputes if passed, attorneys say.

The state's residents will vote Nov. 7 on a ballot initiative ([Question 3](#)) that would create Pine Tree Power Co., owned by ratepayers instead of corporate shareholders. The new entity would issue revenue bonds to forcefully buy Maine's two dominant utilities, Versant Power and Central Maine Power (CMP), using eminent domain.

The measure is one of three energy-related questions before Maine voters, and the one that's the most far-reaching.

The two main coalitions opposing Pine Tree Power, Maine Affordable Energy and Maine Energy Progress, together have raised at least \$37.2 million, nearly all of which came from corporations, according to the [Maine Ethics Commission](#).

"We support the work of the Maine Affordable Energy Coalition and the work they're doing to oppose Question 3," Avangrid said in a statement. "The proposal is bad for Maine."



Image from a digital ad placed in opposition to Maine Ballot Question 3.

Source: AdImpact

Backers of the effort to oust the state's two largest utilities raised about \$1.2 million through a group called Our Power Maine, according to the disclosure reports.

"What we keep hearing is that Mainers can't trust the utilities to keep the lights on," said Lucy Hochschartner, deputy campaign manager for ballot proponents Our Power Maine.

In a Pine Tree State Poll conducted [Oct. 19-23](#) by the University of New Hampshire, 56% of likely voters surveyed said they planned to vote against the proposal and 13% said they were unsure. Gov. Janet Mills (D) is among the opponents.



Image from a digital video ad placed in support of Maine Ballot Question 3

Source: AdImpact

If Question 3 is passed, the [Maine Office of the Public Advocate](#), which has remained neutral on the issue, estimates that subsequent litigation would last five to 10 years.

“We agree with Maine’s Office of the Public Advocate that related issues would take a decade or more to work out, and would certainly involve the state government and courts,” Versant Power said in an emailed statement.

## Legal Questions

Versant and CMP likely would challenge two parts of the buyout: a public entity’s right to take private property by power of eminent domain, and the fair purchase price, said Adam Cote, head of the energy practice group at Maine law firm Drummond Woodsum.

Government entities can constitutionally take private property for public use as long they pay owners fair market value. Utilities might argue that the taking itself is unconstitutional, but since Pine Tree Power Co. would be for public use, the conversation would then shift to what constitutes a fair transaction price.

Pine Tree Power would make an offer to the two utilities. If they don’t agree on the price, the matter

would end up in the Superior Court of Kennebec County, and the decision would be appealable.

Of the uncertainties to be worked out in court, “probably the biggest one is the value question,” said Willy Ritch, executive director of Maine Affordable Energy, one of two main political action committees opposing Pine Tree Power.

The Maine Public Utilities Commission values utilities by their “net book value,” which is determined by the original amount paid for assets like wires, poles, and land, said William Harwood, Maine’s public advocate.

For Versant and Central Maine Power, that value sits around \$5 billion or \$6 billion, though they’re likely to ask for far more, Harwood said. Opponents contracted a study from consultancy Concentric Energy Advisors and found that the assets should sell for around \$13.5 billion if the acquisition occurred in 2030.

That number, along with the related claim that Pine Tree Power would be \$13.5 billion in debt after the acquisition, has become the cornerstone of Maine Affordable Energy advertisements. Pine Tree Power proponents say it’s an overestimation.

“This is unprecedented, so nobody really has the perfect model on which to base their argument,” Cote said.

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Long-term planning is a key part of Pine Tree Power’s pitch to voters. If the consumer-owned utility forms, it would take on debt to acquire Versant and CMP’s assets. That debt wouldn’t be tax exempt, so it’s likely to drive up consumer rates in the short term, Harwood said.

After a buyout, Pine Tree Power’s earnings would be exempt from state and federal corporate income taxes, unlike the two investor-owned utilities, which currently pay \$16.4 million in taxes, according to the Maine Office of the Public Advocate.

This cheaper financing means any debt issued to fund infrastructure upgrades wouldn’t lead to large rate hikes long-term, though Pine Tree Power would still have to pay municipal property taxes,

Harwood said.

“If you’re more concerned about your electric bill over the next five years, you’re probably more inclined to vote against” Pine Tree Power, he said. “If you’re more concerned about the electric bill that your children or grandchildren are going to pay in 15, 20, 25 years, then maybe you should be more inclined to support it.”

## Regulatory Constraints

If formed, Pine Tree Power would be governed by most of the same regulations as investor-owned utilities. One of those bars transmission and distribution utilities from owning generation sources.

That could limit Pine Tree Power’s ability to add more clean energy to the grid and advance the state’s emissions reduction goals, which is part of the proposal, said Phelps Turner, senior attorney at Conservation Law Foundation.

Pine Tree Power’s formation also would have to be greenlighted by the Federal Energy Regulatory Commission and the Maine Public Utilities Commission. Regulators in those two bodies would determine if it’s in the public’s best interest to form the utility.

## Related Ballot Questions

Two measures on Maine’s ballot are related to the Pine Tree Power Co. effort.

One of them ([Question 1](#)) would require a statewide vote before consumer-owned utilities, electric co-ops, and certain other entities take on more than \$1 billion in debt. The other ([Question 2](#)) would prohibit foreign government-owned companies from spending money on state political campaigns and ballot initiatives.

Enmax Corp., owned by the city of Calgary, Canada, is Versant’s parent company, and Spain-based Iberdrola holds a majority stake in Avangrid, which is Central Maine Power’s parent company.

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