



STATE OF MAINE
PUBLIC UTILITIES COMMISSION

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ADMINISTRATIVE DIRECTOR

Testimony of the Maine Public Utilities Commission

Neither for Nor Against

LD 376, An Act to Repeal the Law Regarding the Northern Maine Renewable Energy Development Program

February 14, 2023

Senator Lawrence, Representative Zeigler, and Honorable Members of the Joint Standing Committee on Energy, Utilities, and Technology (Committee), my name is Deirdre Schneider, testifying neither for nor against LD 376, An Act to Repeal the Law Regarding the Northern Maine Renewable Energy Development Program on behalf of the Public Utilities Commission (Commission).

The Commission is testifying today to provide the Committee with some information on the Northern Maine Renewable Energy Development Program (Program). During the 130th Legislature, Public Law 2021, chapter 380¹ created the Program, which directed the Commission to issue a request for proposals for the development and construction of a 345-kilovolt double circuit generation connection line and for the development and construction of qualified renewable energy generation projects in northern Maine designed to connect to and transmit generated power using the generation connection line with the electric grid operated by ISO-New England.

On November 29, 2021, the request for proposals was issued by the Commission and established a submission deadline for transmission projects of March 1, 2022, and for generation projects of May 2, 2022. On November 1, 2022, the Commission conditionally approved a Term Sheet for the development and construction of a 345-kilovolt double circuit transmission line to connect renewable energy resources located in northern Maine with the electric grid operated by ISO-NE and a Term Sheet for a renewable generation project that is designed to connect to and transmit power across that transmission line. On February 3, 2023, the Commission issued an order that specified the Commission determined that funding by Maine ratepayers of 60 percent² of the projects presented in the LS Power and Longroad Energy Term Sheets that the Commission conditionally approved on November 1, 2022, is within the public interest.

The Commission has ordered LS Power and Longroad to make good faith efforts to find additional entities that may be interested in the output of the Longroad facility³ and to “vigorously pursue any opportunities that would allow for regional treatment for the development and construction of these projects, or alternatively or perhaps in addition, opportunities for federal funding.” Both LS Power and

¹ Codified at 35-A M.R.S. § 3210-I.

² Massachusetts will partner in 40% of the project.

³ If any entity has an interest in the output, they must agree to assume some financial responsibility for a commensurate portion of the transmission project.

Longroad are required to provide the Commission with monthly reports documenting these efforts. If the entities are successful, that could further decrease the estimated costs to Maine ratepayers.

The Commission specified in its November 1st order that “these Projects are projected to provide significant benefits to Maine and the region, including jobs during construction, property tax revenue for local communities, and environmental benefits from new renewable energy displacing fossil fuels. The influx of renewable energy into the regional grid will also place downward pressure on electricity prices, benefiting consumers in Maine and throughout New England. It is important to note that these benefits will accrue to Maine whether Maine ratepayers pay for these Projects, or these costs are shared or borne by others.”

I have attached both the November 1st and February 3rd orders for your reference.

I would be happy to answer any questions or provide additional information for the work session.

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2021-00369

November 1, 2022

PUBLIC UTILITIES COMMISSION
Request for Proposals for Renewable
Energy Generation and Transmission
Projects Pursuant to the Northern Maine
Renewable Energy Development Program

ORDER APPROVING
TERM SHEETS

BARTLETT, Chairman; DAVIS and SCULLY, Commissioners

I. SUMMARY

Through this ORDER and pursuant to 35-A M.R.S. § 3210-I (Act), the Commission conditionally approves: (1) a Term Sheet for the development and construction of a 345-kilovolt double circuit transmission line to connect renewable energy resources located in northern Maine with the electric grid operated by ISO-NE (the "Transmission Project"); and (2) a Term Sheet for a renewable generation project that is designed to connect to and transmit power across that transmission line (the "Generation Project"). A copy of each Term Sheet is attached to this Order as Attachments 1 and 2.¹

The Commission's selection of these Projects and their Term Sheets from among all that were considered pursuant to the Commission's Northern Maine Renewable Energy Development procurement process² is based on a determination that the Transmission and Generation Projects, developed and contracted with in accordance with the prices and terms set forth in these Term Sheets, represent the optimum choice pursuant to the statutory criteria. Nevertheless, there remain issues relating to the total cost of these Projects and the public interest standard set forth in the Act. As described in this Order, the Commission finds that these Projects meet the statutory criteria for selection but defers a final determination as to whether the amount of the costs contained in the approved Term Sheets that will ultimately be paid for by Maine ratepayers is reasonable and in the public interest. The Commission notes that there is

¹ Given the need for additional consideration by the Commission of how much of the costs of the selected Projects should be borne by ratepayers, as described below, the specific pricing information contained in these Term Sheets and references to that information made in this Order have been redacted.

² <https://www.maine.gov/mpuc/regulated-utilities/electricity/rfp-awarded-contracts/northernmainerfp>.

ongoing activity related to obtaining renewable energy by Massachusetts, which would allow for a sharing of costs between the two states. Pursuant to its authorizing statute,³ Massachusetts has until December 31, 2022 to make an initial determination as to whether the proposed Projects meet Massachusetts's statutory criteria. This initial determination by Massachusetts is the first step in the process of determining whether the Northern Maine Renewable Energy Development Program, in the form of contracts for the construction and operation of the two selected Projects, is in the public interest.

II. STATUTORY AUTHORITY

During its 2021 session, the Legislature enacted an Act to Require Prompt and Effective Use of the Renewable Energy Resources of Northern Maine, P.L. 2021, Chapter 380, now codified as 35-A M.R.S. § 3210-I, which established the Northern Maine Renewable Energy Development Program. The Act requires the Commission to issue a request for proposals (RFP) for: (1) the development and construction of a 345-kilovolt double circuit "generation connection line," or a transmission line or lines of greater capacity, to connect renewable energy resources located in northern Maine with the electric grid operated by ISO-NE; and (2) the development and construction of renewable energy generation projects that are designed to connect to and transmit power across the transmission line or lines procured.

With respect to the transmission line, the statute anticipates approval of a Transmission Services Agreement (TSA) with a length of 30 years. The statute provides the following evaluation criteria for transmission proposals:

- Cost;
- Economic benefits to Northern Maine;
- The qualifications of the bidders;
- The long-term viability of each proposal; and
- The anticipated contribution of each proposal toward the achievement of the State's renewable energy goals as set forth in 35-A M.R.S. § 3210.⁴

35-A M.R.S. § 3210-I(2)(B).

The statute also requires the Commission to give preference to transmission proposals that:

- In the aggregate with proposals received for generation, "demonstrate the most cost-effective and efficient transmission access to renewable energy

³ The Massachusetts statute in issue is the "Act Driving Clean Energy and Offshore Wind" also known as the Climate Act of 2022, Chapter 179 of the Acts of 2022. The relevant language is found in Section 82.

⁴ Section 3210 of title 35-A requires, among other things, that increasing proportions of Maine's energy supply come from renewable resources.

resources” in Northern Maine in a manner that supports achievement of the State’s renewable energy goals and that will “maximize benefits to the State.” *Id.* § 3210-I(2)(C)(1);

- Favor use, where practicable, of existing utility and other rights-of-way and other existing transmission corridors in the construction of the transmission line. *Id.* § 3210-I(2)(C)(2); and
- Are likely to provide a reduction in transmission costs and costs to ratepayers for electricity over time as more energy is transmitted using the transmission line. *Id.* § 3210-I(2)(C)(3).

The statute provides that “[n]o later than November 1, 2022, the commission shall approve a contract or contracts between one or more transmission and distribution utilities and the bidder of any proposal selected by the commission in accordance with this subsection, except that, if at the close of the competitive bidding process the commission determines that no proposal meets the requirements of this subsection or that approval of a contract or contracts that otherwise meet the requirements of this subsection is not in the public interest, the commission may reject all proposals and may open a new competitive bidding process under this subsection.” *Id.* § 3212-I(2)(F).

With respect to generation proposals, the statute specifies that these are required to cover a contract term of twenty years, except that the Commission may approve a contract for a different duration. *Id.* § 3210-I(3)(A). The generation proposals must be for construction of Class I and Class IA resources as defined in section 3210(2), or for an energy storage system.⁵

The statute sets forth the following selection criteria for generation proposals:

- Cost;
- Economic benefit to Northern Maine;
- The qualifications of the bidder; and
- As determined by the Commission, the “short-term, medium-term and long-term viability of the proposals.”

Id. § 3210-I(3)(C).

The statute requires that the RFP “shall make available to potential [generation] bidders any relevant information” that the transmission bidders submitted to the Commission. *Id.* § 3210-I(3). In addition, the statute provides that the Commission shall give “greatest

⁵ The statute defines an energy storage system as “a commercially available technology that uses mechanical, chemical or thermal processes for absorbing energy and storing it for a period of time for use at a later time.” The statute also precludes the consideration of proposals for “biomass generators fueled by landfill gas or by anaerobic digestion of agricultural products, by-products or waste, or waste-to-energy generation facilities fueled by municipal solid waste.” 35-A M.R.S. § 3210-I(3)(A).

preference” to generation proposals that in the aggregate with transmission proposals “demonstrate the most cost-effective and efficient development of renewable energy resources in northern Maine in a manner that best supports the achievement of the State’s renewable energy goals under section 3210 and maximize benefits to the State.” *Id.* § 3210-I(3)(D). The statute provides that if at the close of the competitive solicitation, the Commission determines that “no generation proposals meet the requirements of the statute, that additional line capacity remains available or that approval of a contract or contracts that otherwise meet the requirements” of the statute “is not in the public interest,” the Commission may reject all proposals and may open a new competitive bidding process.” *Id.* § 3210-I(3)(E). The statute also requires the Commission to “make every effort” to ensure that at least one of the contracts awarded supports the development of a biomass generator fueled by wood or wood waste.⁶ *Id.* § 3132-I(3)(F). Finally, with respect to generation proposals, the statute provides:

Notwithstanding any provision of law to the contrary, the Commission may in its discretion approve and order a contract or contracts under this subsection for the purchase, beginning on or after January 1, 2024, of capacity, renewable energy or renewable energy credits, or any combination thereof, in an amount that is at least 18% of the retail electric load in the State for the period from January 1, 2019 to December 31, 2019.⁷ To the extent practicable, the Commission shall approve and order such contract or contracts on a staggered basis consistent with its expectations for the development during the years of 2024 to 2045 of beneficial electrification as defined in section 10102, subsection 3-A and climate mitigation activities in the State and shall ensure the purchase of capacity, renewable energy or renewable energy credits necessary to achieve beneficial electrification from facilities and technology that are located in the State.

Id. § 3212-I(3).

III. PROCEDURAL HISTORY

On November 29, 2021, the Commission issued the RFP for transmission and generation proposals.⁸ The RFP set forth two phases for the procurement. Phase 1

⁶ The Commission did not receive any qualifying proposals for a biomass generator fueled by wood or wood waste.

⁷ This amount is approximately 1,980,000 MWh/year. The selected Generation Project, described below, meets this threshold amount.

⁸ Prior to initiating the procurement, the Commission conducted an inquiry in which it asked interested parties to answer specific questions regarding the implementation of the statute and the structure of the procurement. See *Maine Public Utilities Comm’n, Commission Initiated Inquiry into the Procurement of Transmission and energy Products Pursuant to An Act to Require Prompt and Effective Use of the Renewable Energy Resources of Northern Maine, P.L. 2021, Chapter 380, Docket No. 2021-00223.*

required proposals for Transmission Projects to be filed in the Commission's secured docket on or before March 1, 2022. Phase 2 required proposals for Generation Projects to be submitted on or before May 1, 2022.⁹

On February 1, 2022, the Commission issued the "Transmission Service Agreement Essential Terms," which set forth the anticipated terms through which the rights to capacity on a Transmission Project selected through the procurement would be conveyed to one or more of Maine's transmission and distribution utilities.

Consistent with section 3210-I(3) of the Act, section 3.3 of the RFP provided that access to certain information regarding Transmission Project proposals would be made available to qualified bidders for Generation Projects, subject to confidentiality provided through a Protective Order and a non-disclosure agreement (NDA). Developers of Generation Projects seeking to participate in the procurement were required to submit an executed NDA before receiving the information. On February 7, 2022, the Hearing Examiners issued Protective Order No. 1 and an NDA. The Protective Order provided that access to information that was designated as confidential would be limited to the Commission members, Staff and consultants, Maine's transmission and distribution utilities, the Maine Office of the Public Advocate, ISO-NE, the Federal Energy Regulatory Commission, the Maine Department of Economic and Community Development, the Maine Department of Environmental Protection and "other federal, regional, state or local governmental or regulatory entities."

On February 23, 2022, the Commission issued a standard contract setting forth the terms that the Commission expected would apply to a contract for the sale of generation. Commission Staff issued a series of Questions and Answers responding to questions submitted by potential bidders regarding the RFP and the solicitation process.¹⁰

The Commission received a number of timely proposals for Transmission Projects on or before March 1, 2022.¹¹ Transmission bidders were required to submit with their proposals a "Transmission Proposal Summary Form" and a "Transmission Project Relevant Information Form." Commission Staff compiled a document that included information regarding each of the Transmission Project options, without identifying the names of the transmission bidders. Staff also gave generation bidders an opportunity to submit requests for additional information from transmission bidders and provided revised versions of the collected information to all generation bidders. The Commission received a number of proposals from developers of renewable Generation Projects on or before May 2, 2022.

⁹ Through a Procedural Order issued on March 11, 2022, this date was changed to May 2, 2022, to account for the fact that May 1 was a Sunday.

¹⁰ The final iteration, Version 10, was issued in the docket on April 12, 2022.

¹¹ To protect the confidentiality of the bidders, the Commission is not identifying the number of proposals it received in response to the RFP, but it was a number sufficient to ensure robust competition for both Transmission and Generation Projects.

Commission Staff met with representatives of ISO-NE to gain an understanding of the cluster study process for the interconnection of this transmission line into the regional grid.¹² Commission Staff also met with representatives of Maine's two transmission and distribution utilities to discuss technical aspects of interconnection as well as the role of the utilities as counterparties to a Transmission Services Agreement (TSA) and any contracts for the purchase of generation.

Staff met with the transmission and generation bidders to obtain clarifying information regarding their proposals as well as to answer the bidders' questions regarding process. Staff developed a standard term sheet for Transmission Projects and a standard term sheet for Generation Projects. Each term sheet drew upon the information provided in the proposals and set forth the general commercial terms that would be incorporated into a final TSA or power purchase agreement. Staff conducted meetings with each bidder to discuss the term sheets and proposed revisions to those term sheets. The bidders were required to submit final versions of the term sheets in the docket¹³ with a cover letter from an authorized representative stating that the term sheet represented a binding commitment and that, in particular, the pricing and commitments specified in the term sheet were firm and binding in the event the proposal was selected for an award of a contract.

IV. THE MASSACHUSETTS PROCESS

In August of this year, Massachusetts passed legislation entitled "An Act Driving Clean Energy and Offshore Wind." Section 82 of this statute provided, in pertinent part:

The department of energy resources may coordinate with one or more New England states undertaking competitive solicitations to consider projects for long-term clean energy generation, transmission or capacity for the benefit of residents of the commonwealth and the region. If the department of energy resources, in consultation with the Attorney General, determines not later than December 31, 2022, that a project would satisfy all of the benefits listed below, the electrical distribution companies shall enter into cost-effective long term contracts.

¹² Staff met with ISO-NE representatives on two additional occasions during the evaluation process to clarify issues relating to the ISO-NE tariff and rules regarding the interconnection process.

¹³ One of the transmission bidders provided a revised bid structure late in the process. Given the analytical framework, it was not feasible to provide this revised concept to generation bidders and require them to revise their pricing to accommodate this new structure. Nevertheless, this transmission bidder's term sheet was advanced for Commission review and evaluation. No bidder that submitted a final term sheet was disqualified from the procurement for any reason.

The factors that Massachusetts must consider include whether any of the proposals: (i) provide cost-effective clean energy generation to electric ratepayers in Massachusetts and the region; and (ii) provide the benefits of clean energy and associated transmission towards meeting Massachusetts's decarbonization goals.¹⁴

Commission Staff notified the bidders for both Transmission and Generation Projects that Massachusetts had expressed interest in the Northern Maine procurement. The bidders consented to Massachusetts being granted access to information regarding their proposals so long as such information was held confidential and used only for purposes of Massachusetts's possible involvement in this procurement.

Commission Staff met with staff of the Massachusetts Department of Energy Resources and a representative from the Massachusetts Attorney General's office to discuss how to proceed. There was agreement that the Commission must proceed with its evaluation and selection on an independent basis. There was also agreement that facilitation of the exchange of information would allow for Massachusetts to conduct the evaluation required by Section 82 as an initial determination as to whether coordination with the Northern Maine procurement would be of benefit to Massachusetts. Commission Staff and officials from Massachusetts executed a Memorandum of Understanding (MOU) to formalize the information exchange and coordination of the procurement. The MOU will be placed in the public docket at the same time this Order is published.

V. DECISION

The Northern Maine Renewable Energy Development Program sets forth a plan and process for development and interconnection of Northern Maine's renewable energy resources with the New England regional electric grid (ISO-NE system). Given the location of these resources, this requires the development and procurement of the generation resources as well as the transmission line to interconnect the resource(s) with the ISO-NE system.¹⁵ The statute directs the Commission to give greatest preference to proposals that, in the aggregate (transmission and generation) "demonstrate the most cost-effective and efficient development of renewable energy resources in northern Maine in a manner that best supports...the State's renewable energy goals...and maximize benefits to the State." 35-A M.R.S. § 3210-I(3)(D). Given the potential relationships and dependencies between Transmission and Generation Projects, e.g., due to respective locations and cost responsibility for Network

¹⁴ Other goals listed in Section 82 include whether the proposals avoid or mitigate environmental impacts, reduce ratepayer costs during winter months, demonstrate progress toward obtaining required permits and interconnection, and have credible project schedule and construction plans.

¹⁵ While the Commission has procured renewable energy resources on a large scale through section 3210-C and, more recently, section 3210-G, this procurement is the first time the Commission has been called upon by Maine's Legislature to procure a transmission project.

Upgrades,¹⁶ the RFP was designed to facilitate the evaluation of proposals on an aggregate basis, recognizing the need to consider these and other factors. For example, transmission bidders were required to provide specific information, which was made available to the generation bidders to allow them to customize their proposals and pricing with respect to each proposed transmission option.

With respect to the qualitative evaluation criteria set forth in the statute for transmission proposals, each of the developers has experience with the construction and operation of transmission facilities and demonstrated the technical and financial capacity to construct, develop and operate such a line, as well as to work with ISO-NE to effect interconnection with the system. In addition, each proposal demonstrated a Project of sufficient magnitude that would bring benefits to Northern Maine in the form of jobs, property taxes, and other economic advantages that would flow from a project of this size. Further, each of the proposals demonstrated the means through which renewable generation could be moved from Northern Maine to the ISO-NE system, which would contribute to Maine's effort to achieve its renewable energy goals.

With respect to the statutory requirement that preference be given to a Transmission Project that would make use of existing transmission corridors or rights of way, 35-A M.R.S. § 3210-I(2)(C)(2), all of the transmission proposals described the line as, to the extent possible, being located in or adjacent existing rights of way for transmission use. Each of the developers described the efforts that would be required to obtain the requisite site control and property interests to be able to locate their proposed Projects on the footprint set forth in their proposals. The Commission recognizes that obtaining access to land rights can present challenges, but the statute does not require a developer to have site control to submit a bid, nor does it set forth a preference for a proposal that demonstrates having such site control.

Therefore, the Commission concludes that the qualitative statutory criteria do not create a clear delineation among the proposed Transmission Projects. Where the Project proposals varied is with respect to the quantitative analysis, that is, the total cost to ratepayers as represented in the proposals and the net cost to ratepayers when combined with the generation proposal selected and described below. The Transmission and Generation Term Sheets selected through this Order represent the "most cost-effective and efficient" means to fulfill the objectives of the Act.

The Commission selects the Transmission Proposal and Term Sheet submitted by LS Power Grid Maine ("LS Power"). The project is a 1,200 MW, 345kV, double circuit transmission line and associated interconnection facilities. The Commission selects the Base Option which has a southern terminus at a new Pittsfield substation

¹⁶ Schedule 25 of the ISO-NE Tariff, which governs Elective Transmission Upgrade Interconnection Procedures defines Network Upgrades as "the additions, modifications, and upgrades to the New England Transmission System required at or beyond the Point of Interconnection to accommodate the interconnection of the Elective Transmission Upgrade to the Administered Transmission System."

and a northern terminus at a new substation in southern Aroostook County. The contract term is 30 years, inclusive of the development period. The initial contract price at the commercial operation date is **[BEGIN CONFIDENTIAL]** \$ **[END CONFIDENTIAL]** per kW-month and escalates 1% per year.¹⁷ The LS Power Term Sheet is attached as Attachment 1.

Similarly, with respect to Generation Projects, the Commission had before it multiple Projects from developers, each with the requisite experience to construct and operate their proposed Project. The Commission further finds that these Projects generally would provide similar kinds of economic benefits to Northern Maine in the form of construction jobs, taxes, and other financial benefits to that area of the state and were also generally comparable with respect to short-term, medium-term and long-term viability.¹⁸

As noted above for the Transmission Projects, ratepayer cost was also the determinative factor in the selection of the Generation Project. The proposal offered by the selected Project best meets the statutory criteria of demonstrating “the most cost-effective and efficient development of renewable energy resources in northern Maine in a manner that best supports the achievement of the State’s renewable energy goals under section 3210 and maximize benefits to the State.” *Id.* § 3210-I(3)(D).

The Commission selects the King Pine Wind Generation Project, which was submitted by Longroad Development Company, LLC (“Longroad”) and approves its Term Sheet. King Pine Wind is a 1,000 MW wind facility located northwest of Houlton in Aroostook and Penobscot counties. The Project estimates its annual energy production to be up to approximately **[BEGIN CONFIDENTIAL]** **[END CONFIDENTIAL]** million MWh per year. The Commission selects the energy only option with a year one price of **[BEGIN CONFIDENTIAL]** \$ **[END CONFIDENTIAL]** and escalating 2.5% per year. The contract term is 20 years. The approved Term Sheet is attached as Attachment 2.

¹⁷ The term sheet includes provisions which reduce the contract price in the event that LS Power is not required to build or own certain interconnection facilities.

¹⁸ This Order does not address the myriad regulatory approvals and permits that a Project of this nature will require. Section 5.2.2 of the RFP identified several such approvals and asked the bidders to provide information as to how they would address these requirements: approvals required by ISO-NE; approvals required by FERC; Commission jurisdictional requirements, such as certificates of public convenience and necessity (CPCN); siting or environmental approvals from federal, state and local governmental entities; and approval by the Maine Legislature for a proposed Project that meets the definition of a “high impact transmission line” as set forth in 35-A M.R.S. § 3131(4-A), pursuant to the results of the referendum election on November 2, 2021, with respect to Question 1: Citizen’s Initiative.

The Commission has determined that the two term sheets it has selected satisfy the statutory criteria at the lowest cost. The combination of these Projects will result in a transmission line from northern Maine that will carry output from a 1,000 MW wind power facility. The ratepayer cost of the transmission line is approximately \$2.78 billion,¹⁹ while the wind power Project is expected to provide a ratepayer benefit of \$1.08 billion.²⁰ Thus, the net cost is approximately \$1.7 billion over 30 years. This combination of Projects is significantly less expensive than any other alternative combination of Transmission and Generation Projects and meets the statutory criteria.

These Projects are projected to provide significant benefits to Maine and the region, including jobs during construction, property tax revenue for local communities, and environmental benefits from new renewable energy displacing fossil fuels. The influx of renewable energy into the regional grid will also place downward pressure on electricity prices, benefiting consumers in Maine and throughout New England. It is important to note that these benefits will accrue to Maine whether Maine ratepayers pay for these Projects, or these costs are shared or borne by others.

While it is clear that development of this combination of Projects is the best option, it is more difficult to assess whether Maine ratepayers should bear the full cost of the Projects that provide such significant regional benefits, the major component of which is the cost of transmission. The Commission has a statutory responsibility to "assist in minimizing the cost of energy available to the State's consumers." 35-A M.R.S. § 101. The Commission made clear in the RFP that it was open to cost-sharing mechanisms to mitigate the costs of the program. Section 4 of the RFP, which set forth the criteria for evaluation of the proposals contains the following:

NOTE REGARDING EVALUATION OF COST: The Commission's evaluation will focus on the cost and benefits to Maine ratepayers rather than the overall costs and benefits of the project. All other factors being equal, the Commission will look favorably upon proposals that are designed to reduce costs to Maine ratepayers through some form of tariff treatment, cost recovery mechanism, cost-sharing with other states, or other means that would prevent the full cost of the Transmission and/or Generation Projects from being borne entirely by Maine ratepayers.

During the evaluation period for this procurement, Massachusetts enacted legislation that provided an opportunity for that State to coordinate with Maine on the procurement. Coordination by Massachusetts in support of the LS Power and King Pine Projects could inure to the benefit of both States. The Massachusetts statute places that state on a different timeline than the Northern Maine Renewable Energy Development

¹⁹ This amount was inadvertently reported in the Commission's Press Release of October 26, 2022 as being \$2.88 billion.

²⁰ The projected ratepayer benefit was evaluated based on the cost of energy less the forecasted wholesale value of that energy.

Program. Massachusetts has until the end of 2022 to determine whether the selected Projects meet its State-specific criteria. This leaves the Commission in the challenging position of not knowing how much of the cost of these Projects Maine ratepayers are being asked to finance. Without this knowledge, it is not possible to make a determination as to whether the cost to Maine ratepayers is reasonable and in the public interest.

Accordingly, while the Commission approves the Term Sheets for LS Power and Longroad's King Pine Wind project, the Commission reserves for later determination how much of the Projects Maine ratepayers should fund. This approach allows LS Power and Longroad to move forward and seek partners, which could include Massachusetts or other entities, while not committing Maine ratepayers to an unknown share of the total cost for these Projects.

Notwithstanding the potential involvement by Massachusetts and the conditional nature of this Order, the Commission notes the binding commitment expressed by LS Power and Longroad in their Term Sheet submittals. Specifically, both of these developers submitted cover letters with their term sheets stating, in pertinent part: "[t]he pricing specified in this Term Sheet will be firm and binding upon us in the event the Commission selects this proposal."

In addition, the Commission notes the importance of the commitments LS Power and Longroad have made to construct the Projects as set forth in their proposals and supporting materials. As noted above, there are key inter-dependencies between the Projects, including those related to the development and cost responsibilities of Network Upgrades. These are highlighted in a letter submitted by Longroad on October 13, 2022, filed in the secured docket, in which it articulated its expectations with respect to such cost responsibility, and upon which its proposal is premised.

With respect to this same set of issues, *i.e.*, Network Upgrades and associated/respective cost responsibility, LS Power has stated that it intends to be responsible for the upgrades identified as part of its Project and needed to enable interconnection with the ISO-NE system. The LS Power term sheet specifically states as follows:

If the Project is selected by the Commission, LS Power will, in accordance with the ISO-NE Tariff: (a) take appropriate actions to account for the Proposed Interconnection Facilities, and, if applicable, the Northern Segment Option, in the ISO-NE cluster study process, and (b) work with ISO-NE to identify the Project as a replacement for the applicable cluster enabling transmission upgrades.

The Commission interprets this statement by LS Power to be a commitment that is entirely consistent with the expectations noted by Longroad, and entirely consistent with the substantive terms of each Project's proposal and Term Sheet. Thus, through this Order, the Commission codifies the expectation and, if necessary, establishes as a

condition of the Term Sheet selection, that LS Power will build, cause to be built, or be financially responsible for all costs related to the building of any and all components of the Transmission Project including upgrades that were set forth in its proposal, and as reflected in the Term Sheet.

The Commission appreciates the robust participation of all the bidders in this procurement and looks forward to continuing to work with Massachusetts as described above

Accordingly, the Commission

ORDERS

1. The Term Sheets identified in Attachments 1 and 2 are approved subject to the conditions and provisions of this Order;
2. Commission Staff are directed to work with the owners/developers of the resources whose Term Sheets have been selected, and with Massachusetts Department of Energy Resources and Attorney General, pursuant to the Memorandum of Understanding, to provide the information Massachusetts requires to complete its evaluation and determination by December 31, 2022; and
3. Commission Staff are directed to report to the Commission by January 15, 2023, as to the initial determination by Massachusetts and, based on that determination, recommend next steps in this procurement process.

Dated at Hallowell, Maine, this 1st day of November 2022.

/s/ Harry Lanphear

Harry Lanphear
Administrative Director

COMMISSIONERS VOTING FOR: Bartlett
 Davis
 Scully

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S. § 9061 requires the Public Utilities Commission to give each party at the conclusion of an adjudicatory proceeding written notice of the party's rights to seek review of or to appeal the Commission's decision. The methods of review or appeal of Commission decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 11(D) of the Commission's Rules of Practice and Procedure (65-407 C.M.R. ch. 110) within **20** days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought. Any petition not granted within **20** days from the date of filing is denied.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within **21** days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S. § 1320(5).

Pursuant to 5 M.R.S. § 8058 and 35-A M.R.S. § 1320(6), review of Commission Rules is subject to the jurisdiction of the Superior Court.

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2021-00369

February 3, 2023

PUBLIC UTILITIES COMMISSION
Request for Proposals for Renewable
Energy Generation and Transmission
Projects Pursuant to the Northern Maine
Renewable Energy Development Program

ORDER REGARDING
MASSACHUSETTS
DETERMINATION

BARTLETT, Chairman; DAVIS and SCULLY¹, Commissioners

I. SUMMARY

Through this ORDER and pursuant to 35-A M.R.S. § 3210-I, the Commission determines that the funding by Maine ratepayers of 60 percent of the projects presented in the LS Power and Longroad Energy Term Sheets that the Commission conditionally approved on November 1, 2022, is within the public interest. Therefore, the Commission approves the Term Sheets.²

II. BACKGROUND

During its 2021 session, the Legislature enacted an Act to Require Prompt and Effective Use of the Renewable Energy Resources of Northern Maine, P.L. 2021, Chapter 380, now codified as 35-A § 3210-I, which established the Northern Maine Renewable Energy Development Program (the Act). Pursuant to the Act, the Commission conducted a competitive solicitation to procure a transmission line and renewable energy resources as described in the statute. On November 1, 2022, the Commission issued an Order conditionally approving a Term Sheet with LS Power for the development and construction of a 345 kV transmission line to connect renewable energy in Northern Maine to the ISO-NE grid, as well as a Term Sheet with Longroad Energy for the King Pine Wind Generation Project.³ The Order stated:

¹ Commissioner Scully concurs with the decision but has written a separate opinion, which appears at the end of this Order.

² The Term Sheets are attached to the November 1, 2022, Order in this docket. As set forth in this Order, the Commission has directed LS Power and Longroad to seek additional offtakers, and thus the pricing information in the Term Sheets will remain confidential.

³ A description of the procurement process is contained in the November 1, 2022, Order.

While it is clear that development of this combination of Projects is the best option, it is more difficult to assess whether Maine ratepayers should bear the full cost of the Projects that provide such significant regional benefits, the major component of which is the cost of transmission.

Maine Public Utilities Commission Request for Proposals for Renewable Energy Generation and Transmission Projects Pursuant to the Northern Maine Renewable Energy Development Program, Docket No. 2021-00369, Order Approving Term Sheets at 10 (Nov. 1, 2022) (Nov. 1, 2022 Order).

The Order described the Massachusetts legislation, Section 82 of An Act Driving Clean Energy and Offshore Wind (C. 179 of the Acts of 2022), that provides an opportunity for that state to become a participant in the Northern Maine procurement. Pursuant to Section 82, the Massachusetts Department of Energy Resources (DOER), in consultation with the Massachusetts Office of Attorney General (AGO), had until the end of 2022 to determine whether the projects the Commission conditionally selected met that state's statutory criteria. The Commission Order provided:

Accordingly, while the Commission approves the Term Sheets for LS Power and Longroad's King Pine Wind project, the Commission reserves for later determination how much of the Projects Maine ratepayers should fund. This approach allows LS Power and Longroad to move forward and seek partners, which could include Massachusetts or other entities, while not committing Maine ratepayers to an unknown share of the total costs for those Projects.

Nov. 1, 2022 Order at 11. The Order directed Staff "to report to the Commission by January 15, 2023,⁴ as to the initial determination by Massachusetts and, based on that determination, recommend next steps in this procurement process." *Id.* at 12.

Prior to and in anticipation of the Order, the Commission entered into a Memorandum of Understanding (MOU) with the Massachusetts DOER and AGO to allow the sharing of information regarding the proposals so that Massachusetts could begin its analysis as soon as a Commission Order was issued. The MOU provides that Massachusetts may request from LS Power and Longroad commitment on the price offered to Maine, as follows:

Bidders must commit to offer Massachusetts the same price for energy and transmission as was bid to Maine. The bidder must also commit that the bid price will remain in effect through the

⁴ Because January 15, 2023 was a Sunday, and Monday, January 16, 2023, was a holiday, the report was provided to the Commissioners on the next business day. Because it contained confidential information relating to the procurement, the report was not published in this docket.

Massachusetts beneficial determination process and any associated contract execution with the Massachusetts EDCs. This commitment is binding upon the bidders through June 30, 2023.

Maine Public Utilities Commission Request for Proposals for Renewable Energy Generation and Transmission Projects Pursuant to the Northern Maine Renewable Energy Development Program, Docket No. 2021-00369, Memorandum of Understanding, Maine Clean Energy Procurement (MOU), § 2(F)(b) (Nov. 2, 2022). The MOU further provides:

If DOER and the AGO determine[s] that the Project, as awarded by the MPUC, will satisfy the requirements of Section 82 and after notification of this determination to the Commission, the Parties agree to engage in discussions to determine appropriate next steps to facilitate the negotiation of contracts between the applicable developer of the Project(s) as awarded. Such further process may require the execution of a separate MOU. The Parties acknowledge and agree that any such contracts related to Massachusetts' share of any winning Project shall be negotiated and executed by the Massachusetts EDCs, assuming they can agree to terms and conditions with respect to any such cost-effective long-term contracts, which shall then need to receive all necessary regulatory approvals, including with the DPU. Massachusetts and the MA EDCs shall have no liability to Maine or any other party regarding the termination of contract negotiations or the failure of the long-term contracts to receive DPU or any other regulatory approvals.

Id. § 2(K).

III. THE MASSACHUSETTS DETERMINATION LETTER

On December 30, 2022, the Mass DOER filed its "DOER Determination on Section 82 of An Act Driving Clean Energy and Offshore Wind" in the procurement docket (attached). The determination letter states that the two projects "would meet" three of the Section 82 criteria with the EDCs "procuring up to 40 percent" of the projects. These three criteria relate to providing cost-effective clean energy, meeting decarbonization goals, and reducing ratepayer costs in the winter.

With respect to the three other statutory criteria, however, the determination letter is conditional. It states that the projects "would meet" these criteria "if the Projects sign a binding Memorandum of Understanding (MOU) with DOER, including enforceable milestone commitments and all other terms and conditions at DOER's sole discretion" to ensure the projects meet those three criteria. The specific criteria in issue include minimization of environmental impact, progress toward obtaining permit approvals and interconnection, and "credible project schedule and construction plans," which include financing and stakeholder involvement.

The determination letter provides:

As DOER, in consultation with the AGO, has determined that the Projects would satisfy the benefits listed in Section 82, DOER's evaluation further indicates that the greatest benefit for the residents of the Commonwealth comes from supporting project viability by contributing to paying for the costs of the Projects, while limiting the portion supported by Massachusetts ratepayers. Project viability shall mean that the Projects have received sufficient financial commitments (through state determinations or other binding commitments) to support the progression through critical milestones to commercial operation. DOER, therefore, determines that contracting for up to 40 percent of the Generation Project's electric generation and renewable energy certification (REC) production and up to 40 percent of the Transmission Project's transmission service payments for less than or equal to 20 years can support project viability and contribute to paying for the project costs in general proportion to the expected regional benefit to Massachusetts. If the Projects have not received sufficient contracting commitments to support project viability by February 28, 2023, DOER's determinations hereunder shall terminate.

The determination letter further makes the following finding of fact: "Executing an MOU with enforceable milestone commitments between the project developers and DOER will ensure that the Projects continue to make progress towards key milestones related to project site control, permitting, environmental mitigation, stakeholder engagement and other project key criteria as they proceed with project development."

Following receipt of the Massachusetts determination letter, Commission staff sought input from LS Power and Longroad regarding certain provisions of the Massachusetts determination, which they provided, and was forwarded to the Commission along with the staff's report.

IV. STATUTORY AND PUBLIC INTEREST STANDARDS

Section 3210-I provides:

No later than November 1, 2022, the commission shall approve a contract or contracts between one or more transmission and distribution utilities and the bidder of any proposal selected by the commission in accordance with this subsection, except that, if at the close of the competitive bidding process the commission determines that no proposal meets the requirements of this subsection or that approval of a contract or contracts that otherwise meet the requirements of this subsection is not in the public interest, the commission may reject all proposals and may open a new competitive bidding process under this subsection.

The issue for the Commission is whether obligating Maine ratepayers to pay 60 percent of the cost associated with developing these projects is in the public interest. In determining what is in the public interest, the Commission takes into consideration its overriding statutory obligation, pursuant to section 101 of Title 35-A, to promote safe, reasonable and adequate service at just and reasonable rates.⁵ In addition, the Commission takes into consideration the purpose of the particular statute in issue. See, e.g., *GridSolar, LLC Petition for Designation as the Smart Grid Coordinator for the State of Maine and for Approval of GridSolar's Initial Five-Year SmartGrid Implementation Plan*, Docket No. 2013-00519, Order at 14 (May 11, 2015).⁶

In this case, section 3210-I created the "Northern Maine Renewable Development Program" to "remove obstacles to the use of and to promote development of the substantial renewable energy resources in northern Maine." 35-A M.R.S. § 3210-I(1). The statute further provides a list of factors the Commission was required to take into account in administering the program and conducting the procurement, such as encouraging the rapid development of renewable resources to achieve greenhouse gas emission reduction. Specifically, the statute directs the Commission to "[r]ecognize that, in advancing the renewable energy and climate policies and goals of the State, the near-term development of the transmission and other infrastructure necessary to reduce greenhouse gas emissions is in the public interest." *Id.* § 3210-I(1)(E).

V. DECISION

The Northern Maine Renewable Energy Development Program sets forth a plan and process for development and interconnection of Northern Maine's renewable energy resources with the New England regional electric grid (ISO-NE). In its Order conditionally approving term sheets with LS Power for transmission and Longroad for

⁵ Section 101 provides:

The purpose of this Title is to ensure that there is a regulatory system for public utilities in the State and for other entities subject to this Title that is consistent with the public interest and with other requirements of the law and to provide for reasonable licensing requirements for competitive electricity providers. The basic purpose of this regulatory system as it applies to public utilities subject to service regulation under this Title is to ensure safe, reasonable and adequate service, to assist in minimizing the cost of energy available to the State's consumers, to ensure that the rates of public utilities subject to rate regulation are just and reasonable to customers and to public utilities and to reduce greenhouse gas emissions to meet the greenhouse gas emissions reduction levels set forth in Title 38, section 576-A.

⁶ In the *GridSolar* case, for example, the Commission considered the purposes of the Smart Grid Policy Act and declined to find that designation of GridSolar as NTA Coordinator as a means of meeting those purposes would be in the public interest.

energy, the Commission noted the significant overall cost of the program as well as its statutory responsibility pursuant to 35-A M.R.S. § 101 to assist in minimizing the cost of energy to Maine ratepayers. The Commission withheld final determination as to whether approving the terms sheets would be in the public interest.

The statute makes clear that the Legislature considers developing renewable generation in Northern Maine, along with the associated transmission infrastructure, to be in the public interest, and that such development is necessary to meet Maine's climate goals and reduce greenhouse gas emissions. The term sheets for the selected projects will undoubtedly advance Maine's renewable energy and climate goals while providing important economic benefits to northern Maine. Consistent with the Commission's findings in the November 1, 2022, Order, the selected projects are from bidders who are experienced developers with the technical experience and financial means to see these projects through and provide the best opportunity for achieving these goals. Therefore, the Commission's determination as to whether approval of the term sheets is in the public interest rests upon a consideration as to whether the project costs borne by Maine ratepayers are reasonable considering the significant regional benefits and the significant costs of the projects.

According to calculations based on currently available market forecasts, the projected net ratepayer cost of the Northern Maine Renewable Development Program is approximately \$1.28 billion over a 30-year period.⁷ This cost, while significant, was priced through a competitive process and within the range of what lawmakers should have reasonably expected when advancing such legislation. With a commitment from Massachusetts for 40 percent of the cost, the cost to Maine ratepayers is estimated to be approximately \$960,000,000, reducing the overall burden for Maine ratepayers over the life of the project.⁸ If, as the Commission hopes, additional entities are identified and are willing to procure some portion of these projects, the cost for Maine ratepayers will be lowered further.

With respect to the length of the contracts, Massachusetts has agreed to procure contracts with a duration of no more than 20 years. This is consistent with the term set forth in the Longroad Term Sheet. With respect to the 30-year term set forth in the LS Power Term Sheet, Maine commits to making the contract payments to LS Power for the years outside the 20-year term set forth in the Massachusetts determination letter. Because the 30-year period is inclusive of the development and construction period, it is anticipated that this period will be relatively short.

To ensure Maine ratepayers are committing to the lowest possible cost for the projects, the Commission orders LS Power and Longroad to make good faith efforts to

⁷ The November 1, 2022, Order estimated the net cost to be \$1.78 billion, which was based on market forecasts available at that time. (Nov. 1, 2022, Order at 10.)

⁸ The estimated cost to be borne by the average Maine residential ratepayer would be about \$1.00 per month over the first 10 years of the project.

find additional entities that may be interested in the output of the Longroad facility, with the caveat that such entities must agree to assume financial responsibility for a commensurate portion of the transmission project. LS Power and Longroad are directed to provide monthly reporting to the Commission on their efforts in this regard.

In addition, the Commission further orders LS Power and Longroad to vigorously pursue any opportunities that would allow for regional treatment for the development and construction of these projects, or alternatively or perhaps in addition, opportunities for federal funding. These efforts are to be documented in the monthly report to the Commission identified in the paragraph above.

The Commission directs Commission Staff to work with LS Power, Longroad, and with one or more of Maine's investor-owned utilities to develop final contracts that are consistent with the Term Sheets, the Commission's request for proposals, and all applicable laws. The Commission delegates to the Director of Electric and Natural Gas Industries the authority to name which of Maine's investor-owned utilities, Central Maine Power, Versant Power, or both, will serve in the capacity of counterparty in the agreements that would result from the approval of the Term Sheets.

Accordingly, the Commission

ORDERS

1. The Term Sheets identified in Appendix A in the November 1, 2022, Order, are approved subject to the conditions and provisions of the November 1, 2022, Order, as well as this Order;
2. Commission Staff are directed to work with the owners/developers of the resources whose Term Sheets have been selected, and with all other parties in Maine and Massachusetts, including but not limited to Central Maine Power and Versant Power (as delegated by the Director of Electric and Natural Gas Industries), the Massachusetts EDCs, as well as the Massachusetts Department of Energy Resources and Attorney General to enter into negotiations for a Transmission Services Agreement and Purchase Power Agreement; and
3. In the event negotiations are successful, Maine's T&D Utilities are directed to submit final versions of the contracts that are consistent with the terms set forth in the Term Sheets and with the November 1, 2022 Order and this Order, to the Commission for approval prior to execution by the parties on or before June 30, 2023.

Dated at Hallowell, Maine, this 3rd day of February, 2023.

/s/ Harry Lanphear

Harry Lanphear
Administrative Director

COMMISSIONERS VOTING FOR: Bartlett
 Davis

COMMISSIONER CONCURRING: Scully

CONCURRENCE.

There is no question that the projects proposed by LS Power and Longroad will advance Maine's renewable energy and climate goals, while providing important economic benefits for northern Maine communities. However, my concern is the financial effects of this decision when combined with all the other costs imposed upon Maine ratepayers by recent public policy decisions. See, e.g., *Maine Public Utilities Commission, Investigation Regarding Management and Sale of Transmission and Distribution Supply Portfolios*, Docket No. 2022-00221, Order at 3-4 (noting the generating capacity under contract through Net Energy Billing and long-term contracts).

Over the past two years, supply costs have surged due to the rise in natural gas prices. Costs for transmission and distribution have increased in recent years and will likely continue to increase in the coming years due to (a) load growth associated with beneficial electrification of the transportation and heating sectors; and (b) enhancements meant to increase the reliability of the grid with respect to increasing storm frequency and severity. Further, the Net Energy Billing Program will shift hundreds of millions of dollars onto Maine ratepayers.⁹ This is in addition to the ratepayer costs associated with past renewable energy procurements the Commission has been directed to undertake, as well as additional, future procurements the Commission may be required to undertake (including an offshore wind procurement the Commission is currently evaluating).¹⁰

Any individual public policy program, when evaluated in isolation, may have reasonable costs. But when considered together, the combined costs are high. By choosing to fund these programs through electricity rates, which are by nature regressive, we impose a tremendous burden on Maine's low-, moderate-, and fixed-income residents.

I fully support the State's efforts to transition away from carbon-based energy systems. It is the imperative of our time. And as we pursue public policy programs to help us achieve these goals, we must make progress in the most cost-effective way. If a

⁹ In November of 2020 the Commission reported to the Legislature that, based on the number of Net Energy Billing Agreements that were pending at that time, there would be \$160 million in lost revenue to Central Maine Power and Versant Power that would have to be recovered from ratepayers on an annual basis. *Maine Public Utilities Commission, Report on the Effectiveness of Net Energy Billing in Achieving State Policy Goals and Providing Benefits to Ratepayers* at 10 (Nov. 10, 2020). Both Central Maine Power and Versant file regular reports with the Commission that provide updates on the projected lost revenue from Net Energy Billing, which must be recovered from ratepayers. See *Maine Public Utilities Commission, Net Energy Billing Evaluation*, Docket No. 2020-00199.

¹⁰ See *New England Aqua Ventus, Request for Approval of Long-Term Contract Pertaining to New England Aqua Ventus*, Docket No. 2022-00100.

program or new investment is worth pursuing, and I believe this one is, we must consider how to fairly fund it. If we have the conviction to do what is necessary to fight climate change, then we must also have the conviction to do what is right when paying the costs of the clean energy transition. We should seek ways to fund these projects through general revenues, a statewide bond issuance, or some other mechanism in which the costs are more fairly distributed. We should not bury these costs in electricity rates that disproportionately impact ratepayers, particularly the most vulnerable ratepayers who are already struggling to pay their bills.

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S. § 9061 requires the Public Utilities Commission to give each party at the conclusion of an adjudicatory proceeding written notice of the party's rights to seek review of or to appeal the Commission's decision. The methods of review or appeal of Commission decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 11(D) of the Commission's Rules of Practice and Procedure (65-407 C.M.R. ch. 110) within **20** days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought. Any petition not granted within **20** days from the date of filing is denied.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within **21** days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S. § 1320(5).

Pursuant to 5 M.R.S. § 8058 and 35-A M.R.S. § 1320(6), review of Commission Rules is subject to the jurisdiction of the Superior Court.

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.