

Committee on Energy, Utilities, and Technology
c/o Legislative Information Office
100 State House Station
Augusta, ME 04333

Re: LD 2055, Resolve, to Require the Public Utilities Commission to Initiate a Feasibility Study to Evaluate Transmission Technologies and Siting Locations for Any Future Electric Transmission Line Proposed Pursuant to the Northern Maine Renewable Energy Development Program

Dear Senator Lawrence, Representative Zeigler, and Members of the Committee:

Thank you for the opportunity to present testimony. My name is Vaughn Hersey, a resident of Unity, Maine. I am testifying in support of LD 2055.

The purpose of this testimony is to provide justification for why LD 2055 should be passed. I recognize LD 2055's current language needs clarification to better guide the proposed project team. However, I will leave that to others and instead point to possible guidance.

The PUC has stated the recent failed contract for the Northern Maine Renewable Energy Development Program required a novel approach as they attempted to procure and negotiate the project contract. One likely contributing factor supporting this statement is the fact that the lump sum bidding process was open to not only established Maine utilities but also merchant developers who were not recognized by the PUC as a utility within the state. The PUC's policies and existing guiding statutory language do not provide a level playing field for a competitive bid process and leaves rate payers at financial risk.

For non-utility large scale private construction projects, the typical method for execution utilizes an Engineer, Procure, and Construct "EPC" approach. This allows the engineering plan to be completed prior to the RFQ process. All bidders quote from the same set of plans and the owner has a contract baseline to hold the chosen bidder accountable during the construction phase. Because the planning process is complete, the bidders have no commercial risk associated with engineering design and related scope changes and instead only have to contend with their own performance risk. This in turn yields bid prices with much lower built-in contingency dollars than the method used by a PUC. The PUC uses a different process to execute large projects with its utility partners, that being: Procure, Engineer, and Construct.

The PUC and a recognized Utility have a different commercial relationship than the PUC and a merchant developer, as defined by existing statutory language. A utility has the ability to pass on project cost overruns to ratepayers which fall within the PUC's review and authority. A merchant developer cannot do this, and as such, during the bidding phase must include significant cost overrun contingency dollars to hedge possible scope and engineering design changes that are identified during the CPCN review process performed after contract award. The utility understands at the time of bid and contract negotiation they will be compensated for cost overruns associated with subsequent CPCN scope and design changes and as such has significantly lower commercial risk than the merchant developer. At the same time, a savvy for-profit corporate utility can inflate their baseline bid to build hidden profit as long as they stay competitive in the bid process, since the merchant developer has in theory raised the project cost due to risk contingency margin. The lack of cost savings for competitive bid transmission projects was addressed in the Federal Energy Regulatory Commission "FERC" Supplemental Comments of Developers Advocating Transmission Advancements and referenced Whitepaper "Revisiting the Evidence on Cost Savings form

Transmission Competition December 2023, attached to Docket No. RM21-17-000, No. AD22-8-000, and No. AD21-15-000. This is a larger issue beyond the scope of this testimony.

Some will argue the proposed feasibility study is a duplicative effort, since the CPCN process involves a rigorous review by multiple state agencies. The key differences are the timing of the feasibility study relative to the procurement process along with the review criteria. The present CPCN review process fails to adequately address socioeconomic issues as evidenced in a preliminary manner by the Governor's Office of Policy Innovation and the Future Report on Equity Considerations in Decision Making pursuant to Public Law 2021, Chapter 279, An Act to Require Consideration of Climate Impacts by the Public Utilities Commission and To Incorporate Equity Considerations in Decision Making by State Agencies dated February 25, 2022. In particular, refer to document page 20 of 24, Item 1. Electric Transmission Infrastructure, "With respect to new transmission lines, utilities are required by law to file for a Certificate of Public Convenience and Necessity (CPCN). The Commission does consider certain environmental aspects as required by law in our review of these projects, but the primary environmental impact evaluation and review is conducted by the DEP. In order for the Commission to incorporate consideration of such impacts on low income/disadvantaged populations or geographic areas as well as environmental justice communities, statutory changes may be needed giving the Commission the authority to engage in these additional considerations." This recognition by the GOPI indicates the tide is starting to change.

Due to statutory language, a correctly executed comprehensive feasibility study performed outside the CPCN review process is presently the only solution to address inflated bid pricing (for reasons stated), socioeconomic issues, and further project delays. The PUC's selection of LS Power in the first attempt was purely based on price since no engineered plan was available for qualitative evaluation. The cost risk to rate payers beyond the contract awarded price is substantial and ultimately sets the project up for failure if the PUC cannot justify the additional burden on rate payers. If a private merchant developer is initially chosen and the subsequent CPCN review increases the developer's cost beyond the contract amount, how does the project move forward? Does the PUC allow the developer to increase its lump sum contract amount accordingly even though the developer is not yet a utility in Maine and subject to PUC oversight? What if the new price is more than the second lowest bidder? Does the second bidder now become the new chosen bidder? Does the project have to go back out for bid and start the process over? This antiquated PUC procurement process is not suited for a renewable energy project competitive bid involving non-utility entities and does not address socioeconomic considerations which are more pronounced for these types of projects.

Fossil fuel electric generation is built in close proximity to load centers on small tracts of land and does not require substantial transmission infrastructure or the taking of private land. Renewable generation is just the opposite requiring large tracts of remote land and long distance transmission. This issue combined with the PUC's operational practices will continue to be the source of significant challenge for the renewable energy transition in the majority of states. New Hampshire already figured this out from the lessons learned during the 10 year failed Northern Pass transmission project and as evidenced by their updated statutory language Title XII Public Safety and Welfare Chapter 162-H Energy Facility Evaluation, Siting, Construction, and Operation. New Hampshire recognized its PUC, like Maine's PUC and most other states, does not have the ability due to statutory language to address the siting issue nor do they have the in-house resources or technical ability.

The Maine PUC procurement process for large scale electric infrastructure could be significantly improved by using a model similar to the New Hampshire model. Rather than ask bidders to provide a lump sum price with no qualitative plan followed by immediate PUC contract award, instead ask each perspective bidder to provide their unique siting plan solution and run each plan through the siting

committee review process. Once this is complete the actual bidding process can take place and the PUC can operate within its historically defined statutory guidelines. Each prospective bidder can still offer their own unique solution. The PUC is simply not equipped to perform the necessary activities associated with siting renewable energy projects in a manner which satisfies the concerns of citizens. The more these types of projects are built using the current model, the greater the public resistance will be. Why not address the problem before it gets attached to renewable energy projects like a Maine tick.

Vaughn Hersey
Unity, ME
LD 2205
See attached file