

**STATE OF MAINE**  
**PUBLIC UTILITIES COMMISSION**

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COMMISSION**

**RE: Request for Proposals for  
Renewable Energy Generation and  
Transmission Projects Pursuant to the  
Northern Maine Renewable Energy  
Development Program**

**Docket No. 2021-00369**

**OPA COMMENTS ON FERC  
ORDER**

**July 26, 2022**

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The Office of the Public Advocate (OPA) offers these comments in response to the Request for Comments on FERC Order issued on July 6, 2022. For the reasons described herein, the June 22, 2022 *Order Denying Application for Authorization to Charge Negotiated Rates* issued by the Federal Regulatory Energy Commission (FERC) in Docket No. ER22-1290-000 should have no impact on the ongoing request for proposals in this proceeding.

As an initial matter, the OPA believes that the procurement in this proceeding provides a meaningful opportunity for the State to purchase renewable power on a long term basis that could both assist it in meeting its climate policy goals in a cost effective manner and improve the stability of energy prices for Maine customers. It is therefore critical for the procurement effort to continue and for issues that may undermine this effort to be resolved in a manner that allows the procurement to move forward.

**I. Background**

On March 10, 2022, Maine Power Link, LLC (MPL) filed an Application for Negotiated Rate Authority with FERC requesting authority to negotiate transmission rates

for its proposed project without being subject to various FERC regulatory requirements including cost of service regulation. MPL argued that it satisfied the conditions established under prior FERC decisions necessary to be granted such authority. Among other things, MPL asserted that the Commission's procurement process in this proceeding ensured that MPL could not exercise market power, one of the key elements necessary to support negotiated rate authority.

On March 31, 2022, the OPA filed a Protest with FERC regarding MPL's filing, arguing that MPL had not satisfied the conditions established under prior FERC decisions necessary to support the grant of negotiated rate authority. Since these conditions were not satisfied, and without the constraints of FERC regulation, the potential was raised that MPL could exercise market power in connection with negotiations with the Commission. The exercise of market power could result Maine consumers paying rates for transmission service that are unnecessarily high. To address this concern, the OPA asked that FERC grant MPL's request for negotiated rate authority subject to the condition that MPL make subsequent filings that demonstrate compliance with the requirements of prior FERC decisions necessary to demonstrate its lack of market power.

On June 22, 2022, FERC issued its *Order Denying Application for Authorization to Charge Negotiated Rates*, in which agreed with the OPA that MPL had not satisfied the requirements to be granted negotiated rate authority. However, it declined to adopt the OPA's requested remedy and instead rejected MPL's request.

## II. Discussion

In the view of the OPA, FERC denial of MPL request is not a materially different outcome than if it had adopted the OPA's recommendation. In particular, the decision is without prejudice. Therefore, MPL (or any other successful transmission bidder in the Commission's procurement) will have the opportunity to seek negotiated rate authority from FERC after it has been selected by the Commission, negotiated a transmission services agreement with Maine's utilities, and had that agreement approved by the Commission. At that time, the successful bidder will be in a substantially better position to demonstrate that it has satisfied the requirements established by FERC precedent to be granted such authority.

Given the opportunity of a successful bidder to seek the authority previously sought by MPL, FERC's denial of MPL's request for such authority has no material impact on the procurement in this proceeding. However, FERC's denial of this request did serve to eliminate the risk that the premature granting of this negotiated rate authority may have adversely affected the OPA's and PUC's ability to pursue conditions designed to prevent the imposition of excessive transmission rates.

Respectfully submitted this 26<sup>th</sup> day of July, 2022.

*/s/William S. Harwood*

William S. Harwood  
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*/s/Andrew Landry*

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