

STATE OF MAINE  
PUBLIC UTILITIES COMMISSION

Docket No. 2021-00369

February 7, 2022

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

PROTECTIVE ORDER NO. 1  
and NON-DISCLOSURE  
AGREEMENT

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By this Order the Presiding Officer grants protection to bid materials, including bid proposals and supporting documentation submitted to the Commission in response to the Commission's Request for Proposals for Renewable Energy Generation and Transmission Projects Pursuant to the Northern Maine Renewable Energy Development Program issued on November 29, 2021 (RFP). The Presiding Officer also provides as Attachment A a Non-Disclosure Agreement (NDA) that must be signed by potential bidders of Generation Projects seeking information designated as confidential.

Section 3.3 of the RFP provided that a key element to ensuring fair and robust competition among all interested projects is to ensure that access to certain information regarding Transmission Project proposals (the Transmission Project Relevant Information) is made available to all interested and qualified bidders who seek to submit a proposal for Generation Projects, subject to NDA provisions. The RFP stated that Transmission Project Relevant Information would be made available on equivalent terms and in sufficient detail and time to allow bidders to prepare and submit timely bids. Section 6.1 of the RFP provided that a Transmission Project bidder had to submit a Transmission Project Relevant Information Form that would be made available to potential bidders for Generation Projects. Section 8.3 of the RFP set forth the protocol for bidders' submission of proprietary information:

A Transmission Project Bidder may designate information included in its proposal as proprietary or confidential information. Certain information, as identified in Sections 3.3 and 6.1, about proposals for Transmission Projects will be made available to potential bidders for Generation Projects under an appropriate non-disclosure agreement. A Generation Project Bidder may designate information included in its proposal as proprietary or confidential information. The Commission will take every reasonable step, consistent with law, to protect information that is clearly identified as proprietary or confidential on the page on which it appears. Protected information may be made available to the Maine T&D Utilities, ISO-NE, FERC, the Office of the Public Advocate (OPA), the Maine Department of Economic and Community Development (DECD), and the Maine DEP or other federal, regional, state or local governmental or regulatory entities. Any term sheets approved by the

Commission, which will include the identity of bidders and projects and the associated prices will become public information.

It is the Commission's customary practice to keep information submitted by bidders confidential throughout the evaluation process and after the selection. Application materials and bid proposals contain sensitive financial information, proprietary business information as well as bid strategy. Disclosure of such information would be harmful to bidders' competitive position. Bidders have a reasonable expectation that the information will be protected from disclosure.

By 35-A M.R.S. § 1311-A and Rule 26(c) of the Maine Rules of Civil Procedure, the Commission is authorized to protect confidential information from disclosure or to permit disclosure only in designated ways. To protect the integrity of the bid process, the Presiding Officer finds that the confidentiality of the bid proposals and supporting documentation must be maintained.

Accordingly, it is

#### O R D E R E D


1. That, subject to findings under the procedure described in paragraphs 2 and 3 below, the following information shall be considered "Designated Confidential Information" for purposes of this Order and, until such time as this Order is modified, access to Designated Confidential Information shall be limited as described in paragraphs 4 and 5 below. Designated Confidential Information shall consist of the following types of information: all bids or proposals submitted in response to the RFP for a Transmission Project or a Generation Project, including but not limited to, the identity of the bidder(s), the project description, pricing information, financial information, and any other proprietary information provided by the bidder(s) in response to the RFP and requests for supplemental information. The identity of the bidder(s) selected to receive a contract, the identification of the projects, and the associated prices and contracts will remain Designated Confidential Information until the Commission approves the award of the contract(s), at which time the information will no longer be Designated Confidential Information.
2. That until further order by the Commission, all Designated Confidential Information shall, unless removed from the coverage of this Order as provided in paragraph 3 below, be and remain confidential. Designated Confidential Information shall not be disclosed for any purposes except solely and in accordance with this Order. No person to whom Designated Confidential Information is accorded pursuant to paragraphs 4 and 5 of this Order shall disclose or reveal directly or indirectly the contents of the Designated Confidential Information to others except as provided in paragraph 6.

3. That if the characterization and designation of any documents or other information as Designated Confidential Information is challenged by any person, the Commission will provide reasonable notice to the bidder or bidders whose Designated Confidential Information would be disclosed as a result of a successful challenge and an opportunity for hearing before deciding the challenge. Upon the entry of an order granting such a challenge, the provisions and restrictions of this Order shall cease and bind any persons with respect to the documents or information that the order shall expressly and clearly remove from the coverage of this order.
4. That, unless this Order is modified, access to Designated Confidential Information shall be limited to: (i) Commission members; (ii) Commission employees; (iii) Commission consultants hired to assist the Commission in this docket; and to the extent necessary as determined by the Commission (iv) the T&D utilities; (v) the Office of the Public Advocate; (vi) ISO-NE; (vii) FERC; (viii) the Department of Economic and Community Development; (ix) the Department of Environmental Protection; (ix) other federal, regional, state or local governmental or regulatory entities. Access to Designated Confidential Information shall be allowed for potential bidders for Generation Projects, but only to the extent set forth in paragraph 5 of this Order.
5. Certain information about proposals for Transmission Projects shall be provided to potential bidders for Generation Projects under the following conditions: (i) the potential bidder for the Generation Project has been determined by the Commission to be a qualified bidder; and (ii) the potential bidder for a Generation Project has signed the Non-Disclosure Agreement attached to this Order.
6. That, unless this Order is modified, no copies of Designated Confidential Information furnished by bidders shall be circulated to persons other than those persons who are authorized under paragraph 4 or 5 of this order to obtain Designated Confidential Information.
7. That the restrictions upon, and obligations accruing to, persons who become subject to this order shall not apply to any Designated Confidential Information submitted in accordance with paragraph 1 of this order if the Commission rules that Designated Confidential Information was publicly known at the time it was furnished or has since become publicly known through no fault of the receiving party.
8. That the Commission may draw upon all Designated Confidential Information in the record in the deliberation of any decision or order that it may issue, but the Commission will avoid the reproduction in its decision of any Designated Confidential Information.

9. That should any Designated Confidential Information be forwarded to the courts of this State in accordance with applicable law and procedures, it shall be under seal and so designated in writing for the information of the court.
10. That the Designated Confidential Information furnished by bidders pursuant to this order shall remain in the possession of the Commission, under seal, and subject to the protective requirements of this order until the Commission or the Presiding Officer shall otherwise order.
11. That this order may be modified by the Commission or Presiding Officer with or without advance notice to the bidders.

Dated at Hallowell, Maine, this 7<sup>th</sup> day of February, 2022

BY ORDER OF THE PRESIDING OFFICER



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Elizabeth J. Wyman