

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

RESPONSE OF MAINE POWER LINK,
LLC TO COMMISSION REQUEST FOR
COMMENTS ON NEGOTIATED RATE
AUTHORITY

Maine Power Link, LLC (“MPL”), a wholly-owned subsidiary of Con Edison Transmission, Inc. (“CET”), welcomes the opportunity to respond to the Maine Public Utilities Commission’s (the “Commission”) Request for Comments concerning the Federal Energy Regulatory Commission’s (“FERC”) decision of June 22, 2022. FERC issued its decision in response to MPL’s application for authorization to charge negotiated rates for transmission capacity rights for MPL’s proposed project in northern Maine (the “MPL Project”).¹

MPL respectfully requests this response be placed in the Commission’s public file.

I. Background

CET is a competitive transmission provider offering innovative solutions to complex transmission challenges both offshore and onshore, including in northern Maine. For several years, MPL has sought to help unlock the extraordinary renewable energy resources available in northern Maine. Multiple renewable energy developers have unsuccessfully attempted for two decades to build transmission into northern Maine to unlock these resources. The proposed MPL Project will bring Maine low-cost renewable energy resources to market with associated jobs and tax revenues, help meet the state’s environmental objectives, and serve customers in southern Maine.

¹ *Maine Power Link, LLC*, Order Denying Application for Authorization to Charge Negotiated Rates, 179 FERC ¶ 61,215 (2022) (“FERC Order”).

MPL supported the efforts of Governor Janet Mills, Maine Senate President Troy Jackson, Senator Trey Stewart, and a bipartisan majority of the Maine Legislature to enact the Northern Maine Renewables Act (the “Act”), which established the Northern Maine Renewable Energy Development Program (the “Program”) led by the Commission. MPL understood then, and has seen more evidence now, that transmission and generation from the two parallel requests for proposals (“RFPs”) being carried out by the Commission pursuant to the Program will provide significant near-term and expandable amounts of renewable energy for Maine at exceptionally low long-term prices. These new resources will assist the Commission in leading Maine to meet its mandated climate goals, including obtaining 80% of its retail sales of electricity from renewable energy sources by 2030, while simultaneously reducing the increasingly destructive impact of high fossil fuel costs on Maine heating, electricity and transportation consumers. As the Commission recently observed when significantly reducing stranded cost charges to consumers:

It’s not always easy to quantify the impact of the renewable energy procurements facilitated by the Commission, as it can take some time to see the results[.] . . . This is an example of the payoff of those procurements, and we are pleased to be able to offer this positive news during a time when energy prices have been trending upward at an unprecedented rate.²

The history of attempts to unlock the renewable energy resources of northern Maine reveals the complexities of obtaining State of Maine, regional and federal approvals of a northern Maine transmission line. MPL has addressed those complexities in response to the Commission RFP for transmission proposals. Additionally, MPL had filed a request with FERC pursuant to Section 205 of the Federal Power Act (“FPA”) seeking negotiated rate authority for the MPL

² MPUC Press Release, *Commission Approves Delivery Rate Decreases for Central Maine Power (CMP) and Versant Power Effective July 1* (June 14, 2022).

Project (the “Initial Negotiated Rate Application”).³ MPL’s FERC filing was public, and MPL also directly informed the Commission, Governor Mills’ Energy Office and Maine’s Office of the Public Advocate (“Maine Public Advocate”) of the filing and its rationale.

II. Reason for MPL’s Request for Authorization to Charge Negotiated Rates

MPL requested negotiated rate authority from FERC because MPL concluded that any winning bidder in the Commission’s transmission RFP likely needs FERC approval to charge negotiated rates for use of the transmission line. Pursuant to the Program, with Commission oversight, such rates will be negotiated with one or more transmission and distribution utilities in Maine (“Maine T&D Utilities”), which will also enter into power purchase agreements with the generation projects selected by the Commission in its parallel generation RFP. The generation projects will use the transmission line to access the transmission system administered by ISO New England, Inc. (“ISO-NE”). Section 3210-I (3)(E) of the Act provides that the Commission:

. . . shall approve a contract or contracts between one or more investor-owned transmission and distribution utilities and the bidder of any proposal selected by the commission in accordance with this subsection. If at the close of the competitive bidding process the commission determines that no proposal meets the requirements of this subsection, that additional line capacity remains available 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.

This is consistent with long-standing practice of the Commission. The terms of any power purchase agreement negotiated between the utility and the generator are subject to final Commission review to ensure, in part, that the terms are just, reasonable and in the public interest.

³ Maine Power Link, LLC, Application for Negotiated Rate Authority, Docket No. ER22-1290 (filed Mar. 10, 2022).

Further, MPL concluded that, under the Transmission Services Agreement (“TSA”) paradigm chosen by the Commission, negotiated rate authority will enable the transmission line’s capacity to be available to provide access to the ISO-NE transmission system for the renewable generation selected in the RFP or through future Commission solicitations issued pursuant to the Act. This principle will protect Maine ratepayers from subsidizing access to the ISO-NE transmission system over the transmission line by resources that were not procured in the RFP process. It is also consistent with Maine law, which requires the Commission to ensure that “the rates of public utilities subject to rate regulation are just and reasonable to customers”⁴ and that the selected project in the RFP process is in the public interest.⁵

To obtain negotiated rate authority from FERC, a transmission developer must satisfy certain factors that require demonstration that the rates charged will be negotiated through an open, competitive, non-discriminatory, fair and transparent process that will result in just and reasonable rates.⁶ MPL sought up front approval that the Commission RFP process satisfied FERC’s requirements for the allocation of capacity on a merchant transmission line.⁷

As made clear in FERC’s 2013 Policy Statement relating to merchant transmission projects, transmission developers have the discretion to seek negotiated rate authority before or after the selection process. Specifically, a transmission developer can seek approval of its “capacity allocation approach after having completed the process of selecting customers” or

⁴ 35-A M.R.S. § 101.

⁵ 35-A M.R.S. § 3210-I(1)(2)(E), (3)(E). In ensuring that the selected project and rates are in the public interest, the Commission is statutorily responsible for making sure that generation projects that are late to connect to a transmission line pay their fair share.

⁶ See *Chinook Power Transmission, LLC*, 126 FERC ¶ 61,134 at P 37 (2009); see generally *Allocation Of Capacity On New Merchant Transmission Projects And New Cost-Based Participant-Funded Transmission Projects; Priority Rights To New participant-Funded Transmission*, 142 FERC ¶ 61,038 (2013) (“2013 Policy Statement”).

⁷ Initial Negotiated Rate Application at 13-15.

alternatively, “first seek approval of its capacity allocation approach, and then demonstrate in a compliance filing a [FERC] order approving that approach that the developer’s selection of customers was consistent with the approved selection process.”⁸ As required by the 2013 Policy Statement, MPL made clear that if the MPL Project is selected by the Commission, MPL would make a subsequent compliance filing with FERC to demonstrate that the Maine RFP process satisfied FERC’s requirements for obtaining negotiated rate authority.⁹

In short, MPL sought early approval from FERC to complete one of the necessary steps for the construction and operation for the MPL Project, or to ease the path for the successful bidder in the Commission’s RFP process that would at a later time need negotiated rate authority.

III. The FERC Order Does Not Impair the RFP Process

FERC denied MPL’s Initial Negotiated Rate Application, determining that the record contained inadequate information (as the RFP had not concluded and MPL lacked such information) concerning whether the negotiated rates would be just and reasonable:

*Based on the record before us, we find that the Northern Maine Renewables Act is ambiguous as to the obligations of the transmission and distribution utilities that would be taking service over the selected transmission project. . . . Therefore, based on the record before us and the ambiguity in the Northern Maine Renewables Act discussed above, we are unable to conclude that MPL would not have captive customers.*¹⁰

Importantly, in the next paragraph of the FERC Order, FERC stated that its denial of MPL’s request for negotiated rate authority “d[id] not prejudice any terms, rates, and conditions

⁸ *Allocation Of Capacity On New Merchant Transmission Projects And New Cost-Based Participant-Funded Transmission Projects; Priority Rights To New participant-Funded Transmission*, 142 FERC ¶ 61,038 at P 31 (2013) (“2013 Policy Statement”).

⁹ Initial Negotiated Rate Application at 23 (stating that it would make a subsequent compliance filing that would include a description of the publicly available information regarding the RFP process, including the results thereof, and why the process satisfied FERC’s requirements). MPL repeated its commitment to make a subsequent compliance filing throughout the proceeding. *See* Motion for Leave to Answer and Answer of Maine Power Link, LLC at 2-4, Docket No. ER22-1290 (filed Apr. 15, 2022).

¹⁰ FERC Order at P 34 (emphasis provided).

of any TSAs associated with the Northern Maine RFP that are ultimately filed with [FERC],”¹¹ and thereby left the door open for MPL – or any other party – to seek FERC approval to charge negotiated rates after the RFP process is completed. FERC’s denial, therefore, is without prejudice to the approval of negotiated rate authority by MPL or any other transmission bidder selected by the Commission.¹² FERC’s denial of MPL’s early request provides valuable guidance to the Commission on what FERC will need to see in the record before it will grant a request for negotiated rate authority for the transmission project selected by the Commission.¹³

MPL is confident that the Commission’s Program and RFP process are legally sound and fully capable of implementation under Maine law, the FPA and FERC’s implementing regulations thereof, FERC’s 2013 Policy Statement and the ISO-NE Tariff.¹⁴ Any statutory ambiguity noted by FERC in the Act or determined by the Commission is well within the Commission’s legal discretion to clarify by statutory interpretation in its decision under the Program.¹⁵

¹¹ FERC Order at P 35.

¹² For this reason, MPL decided not to seek rehearing of the FERC Order. The Commission’s Request for Comment is, therefore, entirely fitting as the next step in the RFP for transmission projects for northern Maine.

¹³ See FERC Order at P 34.

¹⁴ MPL subsequently has discussed these issues in detail with the Maine Public Advocate and the Governor’s Energy Office. The Maine Public Advocate will speak for itself, but MPL believes the Maine Public Advocate’s FERC filing objecting to the MPL FERC request was intended to achieve the same objective sought by MPL: the protection of Maine T&D rate payers from subsidizing others, or, “paying twice for the line.” MPL is optimistic that Maine’s Public Advocate continues to strongly support the Northern Maine Renewable Energy Development Program and will ultimately support any request for negotiated rate authority sought by the successful transmission bidder.

¹⁵ *NextEra Energy Resources, LLC v. Maine Public Utilities Commission*, 2020 ME 34, 227 A.3d 1117 (Me. 2020); *Competitive Energy Services, LLC v. Public Utilities Commission*, 2003 ME 12, 15, 818 A.2d 1039 (Me. 2003).

IV. The Commission Will Ensure That the Winning Bidder Will Be Able to Satisfy FERC’s Requirements for Negotiated Rate Authority

FERC’s negotiated rate authority standards are clear and can be met in Maine’s RFP process. Under long-standing FERC precedent (which has repeatedly been affirmed by the Supreme Court of the United States), a rate that is “freely negotiated... meets the ‘just and reasonable’ requirement imposed by [Section 205 of the FPA].”¹⁶ It is also FERC’s long-standing precedent to accept as just and reasonable rates that were the result of a state regulatory agency’s open, transparent and competitive process that included arm’s length negotiations.¹⁷ In fact, FERC has recently stated that it seeks to defer to state regulatory agencies to determine rates for transmission projects that are planned and developed to meet long-term regional transmission planning goals.¹⁸

Consequently, FERC’s concern that the rates for the selected transmission project are just and reasonable as understood under Section 205 of the FPA will be fully addressed by the Commission’s obligations under Maine law and the competitive nature of this RFP process. Maine law generally requires the Commission to ensure that the regulatory system for public utilities in the State is “consistent with the public interest,” and as such requires the Commission “to ensure that the rates of public utilities subject to rate regulation are just and reasonable to

¹⁶ See, e.g. *Tucson Elec. Power Co.*, 179 FERC ¶ 61,032 at P 3 (2022) (quoting *NRG Power Mktg., LLC v. Me. Pub. Util. Comm’n*, 558 U.S. 165, 174 (2010) (citing *Morgan Stanley Capital Grp. Inc. v. Pub. Util. Dist. No. 1 of Snohomish Cnty.*, 554 U.S. 527, 530 (2008))).

¹⁷ See, e.g., *Pub. Serv. Elec. & Gas Co., et al.*, 111 FERC ¶ 61,152 at PP 14-15 (2005) (holding that a contract between a traditional utility with captive retail customers and its market-based rate affiliate was just and reasonable because the contract was the result of a state regulatory agency’s competitive solicitation process); *Allegheny Energy Supply Co., LLC*, 108 FERC ¶ 61,082 at P 19 (2004) (approving contract between traditional utility with captive retail customers and its market-based rate affiliate) (referring to *Boston Edison Co. Re: Edgar Elec. Energy Co.*, 55 FERC ¶ 61,382 (1991) (same)).

¹⁸ See *Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection*, 179 FERC ¶ 61,028 (Apr. 21, 2022) (issuing a notice of proposed rulemaking to require transmission providers to seek agreement regarding cost allocation from relevant state entities and file the state-agreed cost allocations for certain projects with FERC).

customers.”¹⁹ Moreover, the Maine Supreme Judicial Court has interpreted “public interest” to include consideration of all the statutory obligations of the Commission to ensure “that the public receives adequate service, delivered in a safe and reliable manner, at a charge just and reasonable in relation to the public utility’s costs of providing the service.”²⁰ Primary among these obligations is the duty described in the “Statement of Purpose” of Title 35-A “to ensure that the rates of public utilities are just and reasonable to customers and public utilities.”²¹ Special privileges and unjust discrimination in rates are also specifically prohibited in Section 702.²²

Further, the Act requires the Commission to administer the Program to develop transmission “necessary” for renewable generation to attain Maine’s climate goals²³ and to transition Maine to beneficial electrification.²⁴ Pursuant to its obligations under Maine law, the Commission is conducting the RFPs, has broadly publicized the RFPs and has solicited competitive bids for both the transmission and generation projects to be selected. MPL is confident that the Commission’s RFPs are open and competitive processes, with many competing bidders, which will be instrumental in demonstrating to FERC that multiple alternatives were considered in the RFP process and that the Commission’s selection of the transmission line and its developer were the result of that competitive process.

Furthermore, the Act provides that the Commission, in selecting the winning transmission bidder, will consider the proposed project that is most “cost-effective and efficient”²⁵ and, as noted above, requires that the Commission “approve a contract or contracts

¹⁹ 35-A M.R.S. § 101.

²⁰ *Central Maine Power Co. v Public Utilities Commission*, 414 A.2d 1217, 1224 (Me. 1980).

²¹ 35-A M.R.S. § 101.

²² 35-A M.R.S. § 702.

²³ 35-A M.R.S. § 3210-I(1)(B).

²⁴ 35-A M.R.S. § 3210-I(1)(C).

²⁵ 35-A M.R.S. § 3210-I(2)(C).

between one or more transmission and distribution utilities and the bidder” only if the bid proposal is “in the public interest”.²⁶ The Commission should reiterate this in detail in any decision approving such contract(s). Consistent with years of Commission practice, the winning transmission bidder and the Maine T&D Utilities will freely negotiate any TSA contract,²⁷ which then will be subject to Commission review and approval before it can be finalized and executed.²⁸

In sum, Maine law obligates the Commission to ensure that any action it takes provides for just and reasonable rates for customers. Consistent with its obligation, the Commission is administering its open, transparent and competitive RFP process to select the most cost-effective and efficient transmission and generation projects. The culmination of the Commission’s open and competitive RFP process will be TSAs that will have been freely negotiated at arms-length which, under FERC precedent, are presumptively just and reasonable, that are then reviewed for approval by the Commission. This approval, under FERC precedent, will be accepted by FERC to be just and reasonable.²⁹ Accordingly, the Commission’s RFP process is legally sound and will ensure that the winning bidder of the transmission RFP will satisfy FERC’s requirements to obtain negotiated rate authority.

V. Conclusion

MPL has provided these comments to substantiate that the Act and the Commission’s transmission RFP process is lawful under and consistent with Section 205 of the FPA and FERC policy and precedent regarding negotiated rate authority for transmission projects. In light of the

²⁶ 35-A M.R.S. § 3210-I(2)(E)

²⁷ 16 U. S. C. § 824d(a); *see also Morgan Stanley Capital Group Inc. v. Pub. Util. Dist. No. 1*, 554 U.S. 527, 530 (2008).

²⁸ 35-A M.R.S. § 101, *et seq.*

²⁹ *See supra* nn. 16, 17.

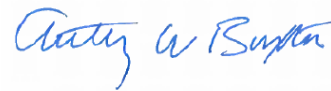
FERC Order, MPL respectfully suggests that any Commission decision ordering TSA approvals pursuant to the Act contains an explanation of the Act, including any necessary statutory interpretation, the Maine electricity regulatory paradigm and practices, as well as the Commission’s decisional rationale, to demonstrate that the rates set forth in a TSA executed pursuant to the RFP will be just and reasonable under Section 205 of the FPA. As evidence of the means to achieving the goal of just and reasonable rates, the multiple submissions to the Commission’s transmission and generation RFPs and the competitive nature of the RFP process should be emphasized in detail in the Commission’s decision. Additionally, while the applicable TSAs will be subject to Commission review and approval, it will also be helpful if the TSAs and the Commission’s decision approving the TSAs acknowledge that the T&D Utilities have negotiated and voluntarily entered into the TSAs.

In short, there is no reason or legal basis for any change in the ongoing Commission’s processing of the Program pursuant to Section 3210-I resulting from the June 22, 2022 FERC Order.

Dated this 27th day of July, 2022

/s/ Tyler Brown

Sebrina M. Greene



Tyler Brown, Esq.
James Blackburn, IV, Esq.
Latham & Watkins
555 Eleventh Avenue
Washington, D.C. 20004
tyler.brown@lw.com
james.blackburn@lw.com

Sebrina M. Greene, Esq.
Con Edison Transmission, Inc.
4 Irving Place
New York, NY 10003
greenes@conedtransmission

Anthony W. Buxton, Esq.
Jeffrey A. Thaler, Esq.
Preti Flaherty Beliveau &
Pachios, LLP
45 Memorial Circle
Augusta, ME 04330
abuxton@preti.com
jthaler@preti.com