

Memorandum of Understanding
Maine Clean Energy Procurement

This Memorandum of Understanding (this MOU), effective as of October 21, 2022 (the Effective Date), establishes a framework for the Maine Public Utilities Commission (MPUC) to share information with the Department of Energy Resources (DOER) and the Massachusetts Attorney General’s Office (AGO) that MPUC has obtained through a certain procurement it initiated, and is by and between the MPUC for the State of Maine and the DOER and the AGO for the Commonwealth of Massachusetts (each, a “Party” or “State/Commonwealth,” and together, the “Parties”).

WITNESSETH:

WHEREAS, the Maine Public Utilities Commission issued a Request for Proposals (RFP) seeking viable and cost-effective proposals for the development and construction of renewable energy generation projects in Northern Maine and a transmission line or lines to connect such generation projects with the New England Independent System Operator (ISO-NE) system (referred to hereinafter as, the Northern Maine Renewable Energy Procurement),

WHEREAS, Maine received bids for transmission lines on March 1, 2022 and bids for renewable energy generation projects on May 2, 2022,

WHEREAS, Pursuant to 35-A M.R.S. § 3210-I, the Commission shall make every effort to ensure that the competitive bidding process for transmission and renewable generation results in the approval of Term Sheets setting forth the essential elements of contracts no later than November 1, 2022,

WHEREAS, Massachusetts has passed an Act Driving Clean Energy and Offshore Wind (Climate Act of 2022 or Climate Act), published as Chapter 179 of the Acts of 2022,

WHEREAS, Section 82 of the Climate Act of 2022 (Section 82) provides that the Massachusetts 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, and

WHEREAS, Section 82 of the Climate Act of 2022 requires Massachusetts to make a determination on or before December 31, 2022, as to whether coordination with Maine’s procurement would be of benefit to Massachusetts pursuant to certain statutory criteria; and

WHEREAS, the Parties, seeking to advance their state energy and environmental goals, desire to enter into this MOU for the purpose of sharing Confidential Information to allow the Massachusetts Parties to assess whether coordination with the Northern Maine Renewable Energy Procurement is a viable option;

NOW, THEREFORE, in consideration of the foregoing, the Parties hereby agree to the following:

1. Definitions

The following terms shall have the meanings set forth below unless defined separately within this MOU:

“AGO” or “Attorney General” means the Massachusetts Attorney General’s Office

“Confidential Information” means any information disclosed by one Party to another hereunder, whether in writing, orally or by document inspection, which is marked or otherwise identified as being confidential at the time of disclosure, or is otherwise deemed confidential, in accordance with the protective orders issued by the MPUC in its procurement docket, 2021-00369 on February 27, 2022.

“Commission” or “MPUC” means the Maine Public Utility Commission

“DOER” means the Massachusetts Department of Energy Resources

“DPU” means the Massachusetts Department of Public Utilities

“EDCs” means the electric distribution companies serving customers in Massachusetts.

“Maine” means the State of Maine.

“Massachusetts” means the Commonwealth of Massachusetts.

“Northern Maine Renewable Energy Procurement” means the Maine Renewable Energy Procurement as defined above.

“MOU” means this Memorandum of Understanding as defined above.

“Project” means the bid or grouping of bids selected by the Commission for the Northern Maine Renewable Energy Procurement.

2. Agreement Regarding the Northern Maine Procurement

The Parties agree to the following with respect to the Northern Maine Renewable Energy Procurement, which is being conducted pursuant to Maine statute, 35-A M.R.S. § 3210-I.

- A. The Parties agree to maintain independence with respect to Maine’s evaluation processes for the potential selection of projects pursuant to the Maine RFP and Massachusetts determination of whether the Project provides benefits to Massachusetts pursuant to Section 82.
 - a. The Commission shall have sole selection authority with respect to the Northern Maine Renewable Energy Procurement and Massachusetts shall have sole authority to make its determination whether any selected Project by the Commission meets the requirements of Section 82.
 - b. The Parties acknowledge and agree that Massachusetts can only select a project that meets the requirements of Section 82, which includes, but is not limited to, projects that have a commercial operation date on or after January 1, 2022 and are eligible for the Massachusetts Class I Renewable Portfolio Standard (RPS).
 - c. This independence does not preclude the Parties from communicating and/or sharing information during their respective evaluation processes.
- B. Prior to the Commission’s deliberation of an award, which will occur on or before November 1, 2022, MPUC will share information with DOER and the AGO that MPUC has received from the bidders, that describe the proposed projects, in order for DOER and the AGO to begin to make an assessment as to whether a project(s) would meet the requirements of Section 82 and be deemed beneficial to Massachusetts.

- a. Prior to the Commission’s deliberation, which is set for October 26, 2022, but will occur no later than November 1, 2022, DOER may provide a written memorandum or an oral communication to the Commission regarding Massachusetts’ preliminary review of any bids, including any information that Massachusetts believes is relevant to its beneficial determination. This memorandum or communication shall not be interpreted as (a) a selection decision by Massachusetts, (b) beneficial determination by DOER or (c) a commitment by Massachusetts to proceed with any particular Project or with this process. The Commission shall have no obligation to consider such written memorandum or communication and any information contained therein when making its own selection decision.
- C. DOER and AGO agree to enter into a Non-Disclosure Agreement, in a form reasonably satisfactory to the Massachusetts parties, with a certain bidder in the Northern Maine Renewable Energy Procurement, which has requested such protection of its particular Confidential Information.
 - D. DOER and AGO agree to keep any Confidential Information provided by MPUC confidential and will only allow the Confidential Information to be disclosed to its staff, consultants, those state employees who have a need to know, and its agents (for purposes of this MOU, “agents” shall include the MA EDCs) for the sole purpose of determining whether any projects or the Project(s) as proposed in the Northern Maine Renewable Energy Procurement would meet the requirements of Section 82 and be deemed beneficial to Massachusetts. DOER and AGO agree to have any third-party agents (non-state employee) who work outside of the DOER and AGO sign nondisclosure agreements (NDAs) or enter into some other form of contractual agreement regarding confidentiality, in a form reasonably satisfactory to the Maine parties prior to receiving Confidential Information. The Commission agrees to keep any Confidential Information provided by DOER and/or AGO confidential and will only allow such Confidential Information to be disclosed to its staff, consultants, those state employees who have a need to know, and its agents, for the sole purpose of fulfilling the obligations of the Parties hereunder. In connection with any Confidential Information, the Parties agree as follows:
 - a. Notwithstanding any other provision of this MOU, but consistent with any applicable Freedom of Information and/or public records laws, as provided below, as well as any applicable record retention periods, the Parties agree to keep all Confidential Information in strict confidence; provided, however, that the Parties shall maintain the strict confidence of any Confidential Information which may constitute a trade secret for so long as such Confidential Information remains a trade secret under applicable law. The Parties shall at all times exercise reasonable care to safeguard such Confidential Information.
 - b. The Parties acknowledge that state agencies and authorities are required to comply with applicable Freedom of Information laws or other public records laws, which includes the Maine Freedom of Access Act (“FOAA”), 1 M.R.S. §§ 400-452, and the Massachusetts Public Records Law, M.G.L. c. 66 *et seq.*, which require public access to records in governmental possession. These laws, as well as other applicable state laws, provide certain exemptions to disclosure, which may include exemptions for materials that do not constitute a public record as that term is so defined, materials that are confidential and subject to a Commission protective order in the case of Maine, consultative or deliberative materials, trade secrets, and materials whose disclosure would cause business harm.

- c. The Parties shall inform each other of relevant procedural steps to be taken under respective State laws regarding the submission of Confidential Information. In addition, a Party who receives a request from a non-party to release, disclose, discuss, or obtain access to any Confidential Information (whether by way of a subpoena, discovery request, or request under any federal or state statute) shall use its best efforts, as permitted by applicable law, to provide notice of such request, at least five (5) calendar days prior to the date on which response to such a request is due, to the Party or Parties from whom the information was received. Unless the other Party or Parties consent to disclosure or release of Confidential Information, the Party receiving the request for disclosure shall assert, to the extent authorized by law, and subject to any mandatory disclosure laws or court orders, all relevant and applicable privileges, exemptions and other objections that the Party receiving the request determines are relevant and applicable to the disclosure of such information. The Parties understand that this MOU does not prohibit disclosure by a Party of any Confidential Information and/or privileged materials that originated with that Party or were independently obtained.
- E. After the deliberation of an award and an entry of an Order by the MPUC, which is set for October 26, 2022 but not later than November 1, 2022, the MPUC will notify DOER and the AGO of such award, and provide a confidential version of the Order if there is a confidential version, to allow DOER and the AGO to determine if the selected Project is beneficial, pursuant to the requirements of Section 82.
- F. Following the MPUC determination of an award on or before November 1, 2022 or as otherwise agreed to by the Parties, Massachusetts will be given the opportunity to request additional information and commitments from the selected Project(s) in order to facilitate its beneficial determination. This may include but is not limited to:
 - a. Requests regarding confirmation from the winning bidder(s) that they wish to be considered for a beneficial determination by Massachusetts.
 - b. Commitment on the price offered to Maine. 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 Massachusetts beneficial determination process and any associated contract execution with the Massachusetts EDCs. This commitment is binding upon the bidders through June 30, 2023.
 - c. Commitment to negotiate a Model power purchase agreement and Model transmission services agreement with the Massachusetts EDCs if deemed beneficial by the DOER in consultation with the AGO;
 - d. Requests for a price for environmental attributes from the Project(s) (e.g., MA Class I Renewable Energy Certificates (RECs)); and
 - e. Requests for additional information regarding transmission interconnection and deliverability.
 - f. Commitment to provide such other information that may be required by DOER and the AGO.
 - g. With respect to the commitments listed above in this subsection, the Commission has no obligation to ensure that the bidders provide the requested commitments.
- G. The MPUC will, to the fullest extent possible and in accordance with the statute and RFP governing the Northern Maine Renewable Energy Procurement, provide information and

guidance to DOER and the AGO with respect to its process of negotiating contracts that will result from the procurement, including a Transmission Services Agreement and one or more Power Purchase Agreement.

- H. DOER, in consultation with AGO, will review the selected Project(s) to determine whether it meets the requirements of Section 82 in the Climate Act of 2022. DOER, in consultation with AGO, may consult with the Commission on their evaluation and selection, but retains the sole authority to make its Section 82 beneficial determination. DOER will inform the Commission of its determination not later than December 31, 2022. Massachusetts is under no obligation to find a beneficial determination under Section 82 or to support or justify any determination made.
- I. As soon as is practicable but no later than December 31, 2022, Massachusetts will inform MPUC of the result of its evaluation as to whether it seeks to coordinate with the Northern Maine Renewable Energy Procurement
- J. If DOER and the AGO determine that the Project, as awarded by the MPUC, will not satisfy the requirements of Section 82 for any reason, Massachusetts will terminate its involvement in the Northern Maine Renewable Energy Procurement, without liability to Maine or any other party. DOER and the AGO will destroy all information and direct its agents to destroy information, to the extent permitted by record retention requirements or any applicable NDA or contractual agreement, that it received from MPUC relating to bidders in the Northern Maine Renewable Energy Procurement and will notify the MPUC of such destruction. This will terminate the MOU between the Parties.
- K. If DOER and the AGO determines 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.

3. General Provisions

A. The Parties acknowledge that this MOU does not provide legal authority for or obligate Massachusetts, DOER or AGO to enter into contracts or other agreements, incur any liability whether express or contingent, or make any binding decisions or commitments with respect to any bid selected by Maine in the Northern Maine Renewable Energy Procurement. All Parties understand and acknowledge that any activities involving the coordination of other Parties do not entail directing the officials or staff of other States.

B. Execution of this Agreement does not obligate the Parties to award any bid under the Northern Maine Renewable Energy Procurement or require Massachusetts, DOER or AGO to make a determination that any Project meets the requirements of Section 82. Unless otherwise agreed to by the

Parties, each Party is responsible for its own costs and expenses related to its activities associated with this MOU.

C. Nothing contained herein shall be construed as creating any legal partnership, joint venture, agency, or any other relationship between the Parties. No Party shall have any right or authority to direct, bind or obligate the other Party in any manner hereunder. Each Party will be solely responsible for payment of all compensation owed to its employees and employment-related taxes, as well as maintenance of appropriate worker's compensation for its employees and insurance as appropriate.

D. The term of this MOU shall commence as of the Effective Date and shall remain in effect until the later to occur of (i) the termination of the Northern Maine Renewable Energy Procurement, (ii) written notification to Maine that Massachusetts will not pursue the Northern Maine Renewable Energy Procurement because Massachusetts has determined there is no beneficial interest for Massachusetts ratepayers (iii) if Massachusetts agrees to take a portion of any awarded bid, then upon any termination of contract negotiations or upon any underlying power purchase agreement and/or transmission services agreement having been executed, delivered and having received all necessary regulatory approvals or otherwise terminated. This MOU is at-will and may be terminated by any Party upon written notice to the other Party. Further, the confidentiality obligations of the Parties pursuant to this MOU shall survive termination of this MOU or any Party's withdrawal therefrom to the extent permitted by law.

E. This MOU may be amended upon the mutual agreement of the Parties hereto.

F. Any written notice provided under this MOU shall be made to signatory designees established by the Parties after execution by electronic mail with delivery receipt.

G. This MOU may not be assigned by any Party. The Parties have caused this MOU to be executed by their duly authorized representatives and is effective as of the date set forth above.

H. The Parties agree, to the extent practicable, that any formal external written communication about the Northern Maine Renewable Energy Procurement and Massachusetts involvement in the same by one Party, including press releases, op-eds, or information placed on state websites, will be shared and coordinated with all other Parties in advance.

I. In the event that any provision of this MOU shall be held invalid or unenforceable for any reason, that provision shall be ineffective to the extent of such invalidity or unenforceability and such invalidity or unenforceability shall not affect any other provision of this MOU.

[Signatures to follow on the next pages]

IN WITNESS WHEREOF, the Parties have executed this MOU as of the date set forth above.

STATE of MAINE

Maine Public Utilities Commission

By: /s/ Elizabeth J. Wyman

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Title: General Counsel

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Date: October 21, 2022

COMMONWEALTH of MASSACHUSETTS

Department of Energy Resources

By: /s/ Robert Hoaglund

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Date: October 21, 2022

COMMONWEALTH of MASSACHUSETTS

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