

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2021-00369

February 3, 2023

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

ORDER REGARDING
MASSACHUSETTS
DETERMINATION

BARTLETT, Chairman; DAVIS and SCULLY¹, Commissioners

I. SUMMARY

Through this ORDER and pursuant to 35-A M.R.S. § 3210-I, the Commission determines that the funding by Maine ratepayers of 60 percent of the projects presented in the LS Power and Longroad Energy Term Sheets that the Commission conditionally approved on November 1, 2022, is within the public interest. Therefore, the Commission approves the Term Sheets.²

II. BACKGROUND

During its 2021 session, the Legislature enacted an Act to Require Prompt and Effective Use of the Renewable Energy Resources of Northern Maine, P.L. 2021, Chapter 380, now codified as 35-A § 3210-I, which established the Northern Maine Renewable Energy Development Program (the Act). Pursuant to the Act, the Commission conducted a competitive solicitation to procure a transmission line and renewable energy resources as described in the statute. On November 1, 2022, the Commission issued an Order conditionally approving a Term Sheet with LS Power for the development and construction of a 345 kV transmission line to connect renewable energy in Northern Maine to the ISO-NE grid, as well as a Term Sheet with Longroad Energy for the King Pine Wind Generation Project.³ The Order stated:

¹ Commissioner Scully concurs with the decision but has written a separate opinion, which appears at the end of this Order.

² The Term Sheets are attached to the November 1, 2022, Order in this docket. As set forth in this Order, the Commission has directed LS Power and Longroad to seek additional offtakers, and thus the pricing information in the Term Sheets will remain confidential.

³ A description of the procurement process is contained in the November 1, 2022, Order.

While it is clear that development of this combination of Projects is the best option, it is more difficult to assess whether Maine ratepayers should bear the full cost of the Projects that provide such significant regional benefits, the major component of which is the cost of transmission.

Maine Public Utilities Commission Request for Proposals for Renewable Energy Generation and Transmission Projects Pursuant to the Northern Maine Renewable Energy Development Program, Docket No. 2021-00369, Order Approving Term Sheets at 10 (Nov. 1, 2022) (Nov. 1, 2022 Order).

The Order described the Massachusetts legislation, Section 82 of An Act Driving Clean Energy and Offshore Wind (C. 179 of the Acts of 2022), that provides an opportunity for that state to become a participant in the Northern Maine procurement. Pursuant to Section 82, the Massachusetts Department of Energy Resources (DOER), in consultation with the Massachusetts Office of Attorney General (AGO), had until the end of 2022 to determine whether the projects the Commission conditionally selected met that state's statutory criteria. The Commission Order provided:

Accordingly, while the Commission approves the Term Sheets for LS Power and Longroad's King Pine Wind project, the Commission reserves for later determination how much of the Projects Maine ratepayers should fund. This approach allows LS Power and Longroad to move forward and seek partners, which could include Massachusetts or other entities, while not committing Maine ratepayers to an unknown share of the total costs for those Projects.

Nov. 1, 2022 Order at 11. The Order directed Staff "to report to the Commission by January 15, 2023,⁴ as to the initial determination by Massachusetts and, based on that determination, recommend next steps in this procurement process." *Id.* at 12.

Prior to and in anticipation of the Order, the Commission entered into a Memorandum of Understanding (MOU) with the Massachusetts DOER and AGO to allow the sharing of information regarding the proposals so that Massachusetts could begin its analysis as soon as a Commission Order was issued. The MOU provides that Massachusetts may request from LS Power and Longroad commitment on the price offered to Maine, as follows:

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

⁴ Because January 15, 2023 was a Sunday, and Monday, January 16, 2023, was a holiday, the report was provided to the Commissioners on the next business day. Because it contained confidential information relating to the procurement, the report was not published in this docket.

Massachusetts beneficial determination process and any associated contract execution with the Massachusetts EDCs. This commitment is binding upon the bidders through June 30, 2023.

Maine Public Utilities Commission Request for Proposals for Renewable Energy Generation and Transmission Projects Pursuant to the Northern Maine Renewable Energy Development Program, Docket No. 2021-00369, Memorandum of Understanding, Maine Clean Energy Procurement (MOU), § 2(F)(b) (Nov. 2, 2022). The MOU further provides:

If DOER and the AGO determine[s] 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.

Id. § 2(K).

III. THE MASSACHUSETTS DETERMINATION LETTER

On December 30, 2022, the Mass DOER filed its “DOER Determination on Section 82 of An Act Driving Clean Energy and Offshore Wind” in the procurement docket (attached). The determination letter states that the two projects “would meet” three of the Section 82 criteria with the EDCs “procuring up to 40 percent” of the projects. These three criteria relate to providing cost-effective clean energy, meeting decarbonization goals, and reducing ratepayer costs in the winter.

With respect to the three other statutory criteria, however, the determination letter is conditional. It states that the projects “would meet” these criteria “if the Projects sign a binding Memorandum of Understanding (MOU) with DOER, including enforceable milestone commitments and all other terms and conditions at DOER’s sole discretion” to ensure the projects meet those three criteria. The specific criteria in issue include minimization of environmental impact, progress toward obtaining permit approvals and interconnection, and “credible project schedule and construction plans,” which include financing and stakeholder involvement.

The determination letter provides:

As DOER, in consultation with the AGO, has determined that the Projects would satisfy the benefits listed in Section 82, DOER's evaluation further indicates that the greatest benefit for the residents of the Commonwealth comes from supporting project viability by contributing to paying for the costs of the Projects, while limiting the portion supported by Massachusetts ratepayers. Project viability shall mean that the Projects have received sufficient financial commitments (through state determinations or other binding commitments) to support the progression through critical milestones to commercial operation. DOER, therefore, determines that contracting for up to 40 percent of the Generation Project's electric generation and renewable energy certification (REC) production and up to 40 percent of the Transmission Project's transmission service payments for less than or equal to 20 years can support project viability and contribute to paying for the project costs in general proportion to the expected regional benefit to Massachusetts. If the Projects have not received sufficient contracting commitments to support project viability by February 28, 2023, DOER's determinations hereunder shall terminate.

The determination letter further makes the following finding of fact: "Executing an MOU with enforceable milestone commitments between the project developers and DOER will ensure that the Projects continue to make progress towards key milestones related to project site control, permitting, environmental mitigation, stakeholder engagement and other project key criteria as they proceed with project development."

Following receipt of the Massachusetts determination letter, Commission staff sought input from LS Power and Longroad regarding certain provisions of the Massachusetts determination, which they provided, and was forwarded to the Commission along with the staff's report.

IV. STATUTORY AND PUBLIC INTEREST STANDARDS

Section 3210-I provides:

No later than November 1, 2022, the commission shall approve a contract or contracts between one or more transmission and distribution utilities and the bidder of any proposal selected by the commission in accordance with this subsection, except that, if at the close of the competitive bidding process the commission determines that no proposal meets the requirements of this subsection 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.

The issue for the Commission is whether obligating Maine ratepayers to pay 60 percent of the cost associated with developing these projects is in the public interest. In determining what is in the public interest, the Commission takes into consideration its overriding statutory obligation, pursuant to section 101 of Title 35-A, to promote safe, reasonable and adequate service at just and reasonable rates.⁵ In addition, the Commission takes into consideration the purpose of the particular statute in issue. See, e.g., *GridSolar, LLC Petition for Designation as the Smart Grid Coordinator for the State of Maine and for Approval of GridSolar's Initial Five-Year SmartGrid Implementation Plan*, Docket No. 2013-00519, Order at 14 (May 11, 2015).⁶

In this case, section 3210-I created the “Northern Maine Renewable Development Program” to “remove obstacles to the use of and to promote development of the substantial renewable energy resources in northern Maine.” 35-A M.R.S. § 3210-I(1). The statute further provides a list of factors the Commission was required to take into account in administering the program and conducting the procurement, such as encouraging the rapid development of renewable resources to achieve greenhouse gas emission reduction. Specifically, the statute directs the Commission to “[r]ecognize that, in advancing the renewable energy and climate policies and goals of the State, the near-term development of the transmission and other infrastructure necessary to reduce greenhouse gas emissions is in the public interest.” *Id.* § 3210-I(1)(E).

V. DECISION

The Northern Maine Renewable Energy Development Program sets forth a plan and process for development and interconnection of Northern Maine’s renewable energy resources with the New England regional electric grid (ISO-NE). In its Order conditionally approving term sheets with LS Power for transmission and Longroad for

⁵ Section 101 provides:

The purpose of this Title is to ensure that there is a regulatory system for public utilities in the State and for other entities subject to this Title that is consistent with the public interest and with other requirements of the law and to provide for reasonable licensing requirements for competitive electricity providers. The basic purpose of this regulatory system as it applies to public utilities subject to service regulation under this Title is to ensure safe, reasonable and adequate service, to assist in minimizing the cost of energy available to the State’s consumers, to ensure that the rates of public utilities subject to rate regulation are just and reasonable to customers and to public utilities and to reduce greenhouse gas emissions to meet the greenhouse gas emissions reduction levels set forth in [Title 38, section 576-A](#).

⁶ In the *GridSolar* case, for example, the Commission considered the purposes of the Smart Grid Policy Act and declined to find that designation of GridSolar as NTA Coordinator as a means of meeting those purposes would be in the public interest.

energy, the Commission noted the significant overall cost of the program as well as its statutory responsibility pursuant to 35-A M.R.S. § 101 to assist in minimizing the cost of energy to Maine ratepayers. The Commission withheld final determination as to whether approving the terms sheets would be in the public interest.

The statute makes clear that the Legislature considers developing renewable generation in Northern Maine, along with the associated transmission infrastructure, to be in the public interest, and that such development is necessary to meet Maine's climate goals and reduce greenhouse gas emissions. The term sheets for the selected projects will undoubtedly advance Maine's renewable energy and climate goals while providing important economic benefits to northern Maine. Consistent with the Commission's findings in the November 1, 2022, Order, the selected projects are from bidders who are experienced developers with the technical experience and financial means to see these projects through and provide the best opportunity for achieving these goals. Therefore, the Commission's determination as to whether approval of the term sheets is in the public interest rests upon a consideration as to whether the project costs borne by Maine ratepayers are reasonable considering the significant regional benefits and the significant costs of the projects.

According to calculations based on currently available market forecasts, the projected net ratepayer cost of the Northern Maine Renewable Development Program is approximately \$1.28 billion over a 30-year period.⁷ This cost, while significant, was priced through a competitive process and within the range of what lawmakers should have reasonably expected when advancing such legislation. With a commitment from Massachusetts for 40 percent of the cost, the cost to Maine ratepayers is estimated to be approximately \$960,000,000, reducing the overall burden for Maine ratepayers over the life of the project.⁸ If, as the Commission hopes, additional entities are identified and are willing to procure some portion of these projects, the cost for Maine ratepayers will be lowered further.

With respect to the length of the contracts, Massachusetts has agreed to procure contracts with a duration of no more than 20 years. This is consistent with the term set forth in the Longroad Term Sheet. With respect to the 30-year term set forth in the LS Power Term Sheet, Maine commits to making the contract payments to LS Power for the years outside the 20-year term set forth in the Massachusetts determination letter. Because the 30-year period is inclusive of the development and construction period, it is anticipated that this period will be relatively short.

To ensure Maine ratepayers are committing to the lowest possible cost for the projects, the Commission orders LS Power and Longroad to make good faith efforts to

⁷ The November 1, 2022, Order estimated the net cost to be \$1.78 billion, which was based on market forecasts available at that time. (Nov. 1, 2022, Order at 10.)

⁸ The estimated cost to be borne by the average Maine residential ratepayer would be about \$1.00 per month over the first 10 years of the project.

find additional entities that may be interested in the output of the Longroad facility, with the caveat that such entities must agree to assume financial responsibility for a commensurate portion of the transmission project. LS Power and Longroad are directed to provide monthly reporting to the Commission on their efforts in this regard.

In addition, the Commission further orders LS Power and Longroad to vigorously pursue any opportunities that would allow for regional treatment for the development and construction of these projects, or alternatively or perhaps in addition, opportunities for federal funding. These efforts are to be documented in the monthly report to the Commission identified in the paragraph above.

The Commission directs Commission Staff to work with LS Power, Longroad, and with one or more of Maine's investor-owned utilities to develop final contracts that are consistent with the Term Sheets, the Commission's request for proposals, and all applicable laws. The Commission delegates to the Director of Electric and Natural Gas Industries the authority to name which of Maine's investor-owned utilities, Central Maine Power, Versant Power, or both, will serve in the capacity of counterparty in the agreements that would result from the approval of the Term Sheets.

Accordingly, the Commission

O R D E R S

1. The Term Sheets identified in Appendix A in the November 1, 2022, Order, are approved subject to the conditions and provisions of the November 1, 2022, Order, as well as this Order;
2. Commission Staff are directed to work with the owners/developers of the resources whose Term Sheets have been selected, and with all other parties in Maine and Massachusetts, including but not limited to Central Maine Power and Versant Power (as delegated by the Director of Electric and Natural Gas Industries), the Massachusetts EDCs, as well as the Massachusetts Department of Energy Resources and Attorney General to enter into negotiations for a Transmission Services Agreement and Purchase Power Agreement; and
3. In the event negotiations are successful, Maine's T&D Utilities are directed to submit final versions of the contracts that are consistent with the terms set forth in the Term Sheets and with the November 1, 2022 Order and this Order, to the Commission for approval prior to execution by the parties on or before June 30, 2023.

CONCURRENCE.

There is no question that the projects proposed by LS Power and Longroad will advance Maine's renewable energy and climate goals, while providing important economic benefits for northern Maine communities. However, my concern is the financial effects of this decision when combined with all the other costs imposed upon Maine ratepayers by recent public policy decisions. See, e.g., *Maine Public Utilities Commission, Investigation Regarding Management and Sale of Transmission and Distribution Supply Portfolios*, Docket No. 2022-00221, Order at 3-4 (noting the generating capacity under contract through Net Energy Billing and long-term contracts).

Over the past two years, supply costs have surged due to the rise in natural gas prices. Costs for transmission and distribution have increased in recent years and will likely continue to increase in the coming years due to (a) load growth associated with beneficial electrification of the transportation and heating sectors; and (b) enhancements meant to increase the reliability of the grid with respect to increasing storm frequency and severity. Further, the Net Energy Billing Program will shift hundreds of millions of dollars onto Maine ratepayers.⁹ This is in addition to the ratepayer costs associated with past renewable energy procurements the Commission has been directed to undertake, as well as additional, future procurements the Commission may be required to undertake (including an offshore wind procurement the Commission is currently evaluating).¹⁰

Any individual public policy program, when evaluated in isolation, may have reasonable costs. But when considered together, the combined costs are high. By choosing to fund these programs through electricity rates, which are by nature regressive, we impose a tremendous burden on Maine's low-, moderate-, and fixed-income residents.

I fully support the State's efforts to transition away from carbon-based energy systems. It is the imperative of our time. And as we pursue public policy programs to help us achieve these goals, we must make progress in the most cost-effective way. If a

⁹ In November of 2020 the Commission reported to the Legislature that, based on the number of Net Energy Billing Agreements that were pending at that time, there would be \$160 million in lost revenue to Central Maine Power and Versant Power that would have to be recovered from ratepayers on an annual basis. *Maine Public Utilities Commission, Report on the Effectiveness of Net Energy Billing in Achieving State Policy Goals and Providing Benefits to Ratepayers* at 10 (Nov. 10, 2020). Both Central Maine Power and Versant file regular reports with the Commission that provide updates on the projected lost revenue from Net Energy Billing, which must be recovered from ratepayers. See *Maine Public Utilities Commission, Net Energy Billing Evaluation*, Docket No. 2020-00199.

¹⁰ See *New England Aqua Ventus, Request for Approval of Long-Term Contract Pertaining to New England Aqua Ventus*, Docket No. 2022-00100.

program or new investment is worth pursuing, and I believe this one is, we must consider how to fairly fund it. If we have the conviction to do what is necessary to fight climate change, then we must also have the conviction to do what is right when paying the costs of the clean energy transition. We should seek ways to fund these projects through general revenues, a statewide bond issuance, or some other mechanism in which the costs are more fairly distributed. We should not bury these costs in electricity rates that disproportionately impact ratepayers, particularly the most vulnerable ratepayers who are already struggling to pay their bills.

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S. § 9061 requires the Public Utilities Commission to give each party at the conclusion of an adjudicatory proceeding written notice of the party's rights to seek review of or to appeal the Commission's decision. The methods of review or appeal of Commission decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 11(D) of the Commission's Rules of Practice and Procedure (65-407 C.M.R. ch. 110) within **20** days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought. Any petition not granted within **20** days from the date of filing is denied.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within **21** days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S. § 1320(5).

Pursuant to 5 M.R.S. § 8058 and 35-A M.R.S. § 1320(6), review of Commission Rules is subject to the jurisdiction of the Superior Court.

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.