

**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

Maine Power Link, LLC                                )  
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  )                                **Docket No. ER22-1290-000**

**MOTION FOR LEAVE TO ANSWER AND ANSWER OF  
MAINE POWER LINK, LLC**

On March 10, 2022, Maine Power Link, LLC (“MPL”) filed an application in the above-captioned proceeding (the “Application”) pursuant to Section 205 of the Federal Power Act (“FPA”)<sup>1</sup> and Part 35 of the Rules and Regulations of the Federal Energy Regulatory Commission (“FERC” or the “Commission”)<sup>2</sup> for authority to charge negotiated rates associated with transmission capacity rights on its proposed transmission line. On March 31, 2022, the Maine Office of the Public Advocate (“MOPA”) submitted a protest in the above-captioned proceeding (the “Protest”). Pursuant to Rules 212 and 213 of FERC’s Rules of Practice and Procedure,<sup>3</sup> MPL hereby moves for leave to answer and submits this answer (“Answer”) to the Protest.<sup>4</sup>

**I. MOTION FOR LEAVE TO ANSWER**

MPL respectfully requests that the Commission accept this Answer, as the Protest raises issues that are not necessary or relevant to MPL’s request for negotiated rate authority, which this Answer clarifies. The Commission regularly accepts otherwise impermissible answers where an

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<sup>1</sup> 16 U.S.C. § 824d.

<sup>2</sup> 18 C.F.R. pt. 35 (2022).

<sup>3</sup> 18 C.F.R. §§ 385.212, 385.213.

<sup>4</sup> Capitalized terms used but not defined herein have the meaning given them in the Application.

answer helps to clarify issues raised in a proceeding and thereby assists the Commission in better understanding and considering those issues.<sup>5</sup>

## II. ANSWER

MOPA requests that, if the Commission grants negotiated rate authority to MPL with regard to the Northern Maine Line, it impose the following three conditions on that authority: that (1) MPL demonstrate that the competitive bidding process administered by the Maine PUC through the Northern Maine RFP is sufficiently open, transparent and robust to constrain rates; (2) the resulting rates assessed by MPL actually reflect the results of the competitive bidding process under the Northern Maine RFP; and (3) MPL provide assurance that Maine ratepayers will not have to pay for the cost of excess capacity on the Northern Maine Line.<sup>6</sup> As explained herein, MOPA's request should be denied. The first two additional conditions it asks the Commission to impose are unnecessary. As for the third condition, *if* MPL is selected by the Maine PUC to negotiate a TSA with the Maine T&D Utilities and *if* there is excess capacity on the Northern Maine Line, then this issue can be addressed in the negotiation of the TSA, as part of the Northern Maine RFP process, and as required by the Northern Maine Renewables Act. Accordingly, MPL requests that the Commission reject the Protest and grant MPL negotiated rate authority as requested in the Application.

### A. The Maine PUC Is Pursuing A Two-Stage Procurement Process As Required By Maine Law And The Northern Maine RFP Process Is Underway.

As explained in the Application, Maine is pursuing a two-stage solicitation that includes a separate transmission procurement approach to provide access to the ISO-NE transmission system

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<sup>5</sup> See, e.g., *Calpine Corp.*, 162 FERC ¶ 61,148 at P 13 (2018) (accepting an answer because it “provided information that assisted us in our decision-making process”); *Wis. Energy Corp.*, 151 FERC ¶ 61,015 at P 21 (2015) (same); *Exelon Corp.*, 149 FERC ¶ 61,148 at P 28 (2014) (same).

<sup>6</sup> See Protest at 7-8.

for the new renewable generation resources in northern Maine to be procured in a second parallel generation procurement. Pursuant to the Northern Maine Renewables Act and the Northern Maine RFP, responsive proposals for the Northern Maine Line were due March 1, 2022, and responsive proposals for the Northern Maine Renewables are due May 1, 2022. MPL requests negotiated rate authority in the event that the Maine PUC selects its Project to be the Northern Maine Line that will, as required by Maine law,<sup>7</sup> provide the Northern Maine Renewables access to the ISO-NE transmission system.<sup>8</sup> In submitting its proposal for the Northern Maine Line in response to the Northern Maine RFP, MPL also submitted interconnection requests to ISO-NE, and submitted its Application with the Commission seeking the ability to allocate up to 100% of the Project's transmission capacity through TSAs to be negotiated with the Maine T&D Utilities. In turn, the Maine T&D Utilities will also negotiate PPAs with the Northern Maine Renewables, which will access the ISO-NE transmission system through the Northern Maine Line. Both the Northern Maine Line and the Northern Maine Renewables are to be selected by the Maine PUC through its open and competitive solicitations issued pursuant to the Northern Maine Renewables Act and will have to negotiate definitive offtake agreements with the Maine T&D Utilities.

**B. The Commission Should Not Impose Upon MPL The Additional Conditions Requested By MOPA In Granting MPL Negotiated Rate Authority.**

MOPA's first two requested conditions are unnecessary. In its Application, MPL already volunteered to make a compliance filing with FERC if it is selected by the Maine PUC in the Northern Maine RFP to negotiate and execute TSAs with the Maine T&D Utilities to develop,

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<sup>7</sup> Me. Rev. Stat. tit. 35-A § 3210-I(2).

<sup>8</sup> The Commission has approved the procurement of transmission capacity through a state solicitation where such transmission capacity will be reserved in the first instance for renewable generation procured through a state solicitation. See *PJM Interconnection, L.L.C.*, 179 FERC ¶ 61,024 at P 46 (2022) (approving a state's "designation of certain generators to receive the immediate benefit of the state's investment" in a transmission project).

construct and operate the Northern Maine Line that satisfies the Commission’s requirements for obtaining negotiated rate authority. Such a compliance filing, which MPL has already volunteered to make, would directly address and should fully satisfy the first two conditions MOPA has asked the Commission to impose in granting negotiated rate authority to MPL.<sup>9</sup>

MOPA’s third requested condition is not necessary as the RFP issued by the Maine PUC includes provisions for the negotiation of TSAs between the Maine T&D Utilities and the entity selected by the Maine PUC in the Northern Maine RFP to develop, construct and operate the Northern Maine Line.<sup>10</sup> The Maine PUC has not yet selected that entity much less ascertained whether or not there may be any excess capacity on the Northern Maine Line. Regardless, such issues would be included in the negotiation of the TSAs between that entity and the Maine T&D Utilities. As such, this issue is not relevant to MPL’s request.

MPL’s Application simply asks the Commission to grant it the ability to negotiate the terms of TSAs in the event that MPL is selected to develop, construct and operate the Northern Maine Line. The Northern Maine RFP is ongoing and the ultimate capacity of the Northern Maine Line and the cost allocation of that capacity has not yet been considered by the Maine PUC. Moreover, the TSAs between the entity ultimately selected by the Maine PUC to develop the Northern Maine Line and the Maine T&D Utilities have yet to be negotiated, the entry of the Maine T&D Utilities into the TSAs must be approved by the Maine PUC, and the TSAs must be filed with FERC to

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<sup>9</sup> See Application at 23. Specifically, MPL stated that its compliance filing will include a description of the publicly available information regarding the Northern Maine RFP process, including the results thereof, and why it satisfies all four factors of the Commission’s analysis in *Chinook* as well as the requirements of the 2013 Policy Statement. *Id.*

<sup>10</sup> See Maine PUC, Transmission Service Agreement – Key Terms, available at <https://www.maine.gov/mpuc/regulated-utilities/electricity/rfp-awarded-contracts/northernmainerfp>. As stated therein, the Maine PUC may request multiple bidders to propose a TSA, such as “when a bidder has been selected for a short list.”

become effective.<sup>11</sup> Accordingly, the Commission should grant MPL negotiated rate authority as requested in its Application and not impose the additional conditions on that authority sought by MOPA in its Protest.

**C. MPL Does Not Have Captive Customers, And The Commission’s Policies And Precedent Regarding Negotiated Rate Authority Are Consistent with MPL’s Request.**

MOPA contends that obtaining negotiated rate authority is not directed by the Northern Maine Renewables Act,<sup>12</sup> and that contrary to the requirements for negotiated rate authority, the Maine T&D Utilities and the Northern Maine Renewables will be “captive customers” to MPL if it is selected by the Maine PUC.<sup>13</sup>

The Northern Maine Renewables Act implicitly requires MPL to seek and obtain negotiated rate authority. The Northern Maine RFP<sup>14</sup> requires a bidder to identify, and obtain, necessary FERC approvals for their proposed project,<sup>15</sup> which include those approvals necessary to negotiate rates, terms and conditions with Maine T&D Utilities and enter into one or more FERC-jurisdictional TSAs. Consistent with this requirement, MPL seeks negotiated rate authority

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<sup>11</sup> In addition, MPL already stated in the Application that, *if* there is excess transmission capacity on the Northern Maine Line and when applicable, it would submit a compliance filing(s) for Commission approval demonstrating the processes for the allocation of such excess capacity. Application at 15-16 & n.51 (citing *Conjunction LLC*, 108 FERC ¶ 61,090 at P 16 (2004)).

<sup>12</sup> Protest at 4.

<sup>13</sup> Protest at 5. MOPA also contends that there is not competition from the incumbent utility. Protest at 6 (there is an “absence of competition from incumbent utility service providers”). To the extent MOPA claims that the Northern Maine RFP process will not be competitive, or that MPL is not subject to competition, MOPA provides no factual support for such a claim.

<sup>14</sup> The Maine PUC issued the Northern Maine RFP as required under the Northern Maine Renewables Act. Me. Rev. Stat. tit. 35-A § 3210-I(1). Thus, requirements under the Northern Maine RFP are implicit requirements under the Northern Maine Renewables Act.

<sup>15</sup> See Northern Maine RFP at § 5.2.2(B).

from the Commission in accordance with the Commission’s policies and precedent regarding negotiated rate authority for merchant transmission facilities.<sup>16</sup>

MPL and its affiliates have no ownership in, or control of, a traditionally regulated transmission system in New England and MPL proposes to build a transmission line in Maine that will recover its costs through negotiated rates via one or more TSAs as required by Maine law and the Northern Maine RFP.<sup>17</sup> As such, MPL and its affiliates do not have captive customers in New England,<sup>18</sup> including as related to MPL’s proposed Northern Maine Line.<sup>19</sup> Moreover, the rates,

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<sup>16</sup> See 2013 Policy Statement at P 16 (summarizing that the purpose of negotiated rate authority is for a “developer of a new merchant transmission project to select a subset of customers, based on not unduly discriminatory or preferential criteria, and negotiate directly with those customers to reach agreement on the key rates, terms, and conditions for procuring up to the full amount of transmission capacity”).

<sup>17</sup> See Me. Rev. Stat. tit. 35-A § 3210-I(2)(A); Northern Maine RFP at § 3.1.

<sup>18</sup> See Application at 21. Selling transmission capacity to a Maine T&D Utility pursuant to a negotiated rate-based TSA does not mean MPL will have captive customers. MPL will not become a local utility franchise holder as a result of its ownership or operation of the Northern Maine Line; nor will the Northern Maine Line be within MPL’s affiliate’s traditionally regulated transmission system.

<sup>19</sup> See *TransEnergie U.S., Ltd.*, 91 FERC ¶ 61,230, at 61,836 (2000) (determining that captive customers are those “customers located within a franchise area who have no ability to take service from any party other than the local franchise holder”); see also 2013 Policy Statement at P 2 (“[I]nvestors in merchant transmission projects assume the full market risk of development,” and as such, are “[u]nlike traditional utilities recovering their costs-of-service from captive and wholesale customers”). Indeed, the Commission has expressly “decline[d] to include transmission customers in the definition of ‘captive customers.’” *Mkt.-Based Rates for Wholesale Sales of Elec. Energy, Capacity & Ancillary Servs. by Pub. Utils.*, Order No. 697, 119 FERC ¶ 61,295, at P 482, *clarified*, 121 FERC ¶ 61,260 (2007), *order on reh’g*, Order No. 697-A, 123 FERC ¶ 61,055, *clarified*, 124 FERC ¶ 61,055, *order on reh’g*, Order No. 697-B, 125 FERC ¶ 61,326 (2008), *order on reh’g*, Order No. 697-C, 127 FERC ¶ 61,284 (2009), *order on reh’g*, Order No. 697-D, 130 FERC ¶ 61,206 (2010), *aff’d sub nom. Mont. Consumer Counsel v. FERC*, 659 F.3d 910 (9th Cir. 2011). And, under Commission precedent, “merchant transmission projects differ from those of traditional public utilities in that the developers of merchant transmission projects assume all of the market risk of a project and have no captive customers from which to recover the costs of the project.” See, e.g., *Anbaric Development Partners, LLC*, 162 FERC ¶ 61,097 at P 1 n.1 (2018).

Moreover, the Commission’s concern about captive customers appears to be motivated in large part, if not wholly, by its “fundamental goal” of “protect[ing] customers served by franchised public utilities from inappropriately subsidizing the market-regulated or non-utility affiliates of the franchised public utility or otherwise being financially harmed as a result of affiliate transactions and activities.” See *Cross-Subsidization Restrictions on Affiliate Transactions*, Order No. 707, 122

terms and conditions to be included in any TSA between the winning bidder and the Maine T&D Utility(ies) will be the result of a competitive process administered by the Maine PUC and subject to Maine PUC approval, which is statutorily charged with ensuring that the rates Maine citizens are charged by the Maine T&D Utilities are just and reasonable under Maine law.<sup>20</sup>

Accordingly, the Commission should grant MPL negotiated rate authority as requested in its Application and not impose additional conditions sought by MOPA because MPL satisfies all four factors of the Commission’s analysis in *Chinook* as well as the requirements of the 2013 Policy Statement.

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FERC ¶ 61,155, at P 42, *order on reh’g*, Order No. 707-A, 124 FERC ¶ 61,047 (2008) (“Order No. 707”). Here, there are no such concerns. *See* Application at 21 (explaining that MPL’s proposed Northern Maine Line does not raise any potential for affiliate abuse).

<sup>20</sup> Me. Rev. Stat. tit. 35-A §§ 101, 103(2)(B) (setting forth the duties of the Maine PUC); *Id.* at §§ 3210-I(2)(E), (3)(E) (providing that the Maine PUC may reject proposals that it determines are “not in the public interest”). Consequently, the Northern Maine RFP does not lack voluntariness, as the RFP does not compel the selection of any transmission developer to develop, construct and operate the Northern Maine Line. *See contra* Protest at 5-6. The Maine PUC does not have to select any proposal for the Northern Maine Line if it determines that none of the proposals meets the requisite goals of the Northern Maine Renewables Act. Northern Maine RFP at § 8.5. Further, the Maine T&D Utilities and the Northern Maine Renewables have agency in participating in the Northern Maine RFP. The Maine T&D Utilities may be directed by the Maine PUC as “contracting parties” under the Northern Maine RFP, but they are free to negotiate the terms of the TSA and may decline to enter into a TSA that includes rates, terms, or conditions with which they do not agree. *See* Me. Rev. Stat. tit. 35-A § 3210-I(4)(C). And, although the Northern Maine Renewables “must use the transmission capacity of the winning bidder,” *see* Protest at 6, the entities seeking to be selected to develop, construct and operate the Northern Maine Renewables have access to information regarding the various proposals for the Northern Maine Line and each of those entities will voluntarily decide whether to respond to the RFP and to which of the proposals for the Northern Maine Line they will seek to connect their proposed Northern Maine Renewables, *see* Northern Maine RFP at §§ 3.3, 5.3.1(D).

### III. CONCLUSION

WHEREFORE, for the foregoing reasons, MPL respectfully request that the Commission grant its motion for leave to answer and accept this Answer and issue an order granting the authorizations requested in the Application.

Respectfully submitted,

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Dated: April 15, 2022



**Certificate of Service**

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary of the Commission in this proceeding.

Dated at Washington, DC, this 15th day of April, 2022.

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