

July 6, 2022

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

REQUEST FOR COMMENTS
ON FERC ORDER

On June 22, 2022, the Federal Regulatory Energy Commission (FERC) issued an *Order Denying Application for Authorization to Charge Negotiated Rates* in Docket No. ER22-1290-000 (hereafter “FERC Order”) (attached). This Order was issued in response to Maine Power Link’s (MPL) application for authorization to charge negotiated rates for transmission rights for MPL’s project, which is participating in this procurement.¹ The FERC Order was also responding to a protest that the Office of the Public Advocate (OPA) had filed on April 15, 2022, to the MPL application. FERC Order ¶ 8.

The FERC Order denied MPL’s application on the grounds that MPL had failed to meet its burden of showing that the negotiated rates would be “just and reasonable” within the meaning of FERC precedent. The FERC Order stated, in part: “[T]o receive authorization to charge negotiated rates, an applicant must show that it has assumed the full market risk of its project; it must do so by sufficiently demonstrating that it has no ability to shift risk or pass any costs onto parties or neighboring utilities that are not participating in the project. We find that MPL has failed to make such demonstration here.” FERC Order ¶ 33.

The FERC Order further held:

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. Under the Northern Maine Renewables Act, “the [Maine Commission] shall approve a contract or contracts between one

¹ As a matter of practice, the Commission does not disclose the identities of bidders in procurements. In this case, however, MPL filed its request for authorization to charge negotiated rates with FERC in which it explicitly stated that it was participating in this procurement. See FERC Order ¶ 3 (“MPL states that it has submitted the Project for consideration in the Northern Maine RFP conducted by the Maine Commission.”)

or more transmission and distribution utilities and the bidder of any proposal selected by the commission,” and the Maine Commission “shall . . . [a]t its discretion . . . use or direct one or more transmission and distribution utilities as contracting parties under this section to participate in a regional or multistate competitive market or solicitation.” MPL claims that “each utility is free to negotiate the terms of the TSA and may decline to enter into a TSA that includes unacceptable rates, terms, or conditions.” However, while it is clear that the transmission and distribution utilities may be compelled to participate in the solicitation process, it is not clear whether such participation obligates them to execute the TSA and to take service under the TSA over the selected transmission project. If so required, the transmission and distribution utilities may be required to assume some of the Project’s market risk under negotiations that are not at arm’s length, i.e., the Maine Commission would direct them to purchase transmission service from MPL. 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.

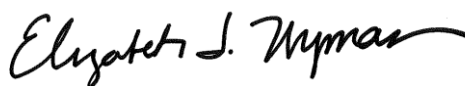
FERC Order ¶ 34.

In light of the holding in the FERC Order and the potential impact that it may have on this procurement, the Commission invites the bidders in this procurement, Maine’s transmission and distribution utilities, and any interested person to file comments regarding the issues raised in the FERC Order. This procurement docket is a secured docket. To protect the confidentiality of the bidders in this procurement, the Commission will not publish the comments of bidders in the public side of this docket, unless the commenting bidder states that it wants its comments to be filed in the public docket. The Commission will publish the comments of any non-bidder in the public docket.

Comments are to be filed on or before Wednesday, July 27, 2022.

Dated at Hallowell, Maine this 6th day of July, 2022.

BY ORDER OF THE HEARING EXAMINER



Elizabeth J. Wyman