STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2022-00____

December 16, 2022

MAINE RENEWABLE ENERGY ASSOCIATION, COALITION FOR COMMUNITY SOLAR ACCESS, CENTRAL MAINE POWER COMPANY, AND VERSANT POWER,
Joint Petition for Emergency Rulemaking Regarding Interconnection Procedures (Chapter 324) – Level 2 Interconnections

JOINT PETITION FOR EMERGENCY RULEMAKING REGARDING INTERCONNECTION PROCEDURES (CHAPTER 324) – LEVEL 2 INTERCONNECTION

The Joint Petitioners[1] submit this emergency rulemaking petition to the Maine Public Utilities Commission (the "Commission") pursuant to 5 M.R.S. § 8054 and Section 6(B), Chapter 110 of the Commission's Rules of Practice and Procedure. Joint Petitioners respectfully ask the Commission to initiate an emergency rulemaking to amend the Small Generator Interconnection Procedures Rule ("Chapter 324") to resolve issues related to the screening of certain Level 2 interconnection requests under Chapter 324 and the adverse effect these requests can have on advanced Level 4 interconnection requests. Joint Petitioners consist of investor-owned transmission and distribution utilities ("T&D Utilities") and trade associations representing renewable energy project developers and owners with pending interconnection requests. Joint Petitioners reached consensus on a limited set of changes to Chapter 324 that will mitigate or avoid inadvertent adverse effects caused by some Level 2 interconnection requests.

Pursuant to 5 M.R.S. § 8054, the proposed emergency rule would be in effect only until such time as the Commission amends Chapter 324 in accordance with 5 M.R.S. §§ 8052 & 8053,

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[1] Maine Renewable Energy Association ("MREA"), Coalition for Community Solar Access ("CCSA"), Central Maine Power Company ("CMP"), and Versant Power ("Versant"). MREA is a not-for-profit association of renewable energy producers (including solar developers), suppliers of goods and services to those producers, and other supporters of the renewable energy industry; MREA represents the renewable power industry at the State Legislature and before the Maine Public Utilities Commission. CCSA is a national coalition of businesses and nonprofits working to expand customer choice and access to solar to all American households and businesses through community solar.

but in no event would the proposed emergency rule remain in effect for longer than 90 days from the date of a Commission Order adopting the proposed emergency rule. Joint Petitioners understand that the Commission has initiated a rulemaking in Docket No. 2022-00345, and will actively participate in that docket to adopt "permanent" rule amendments. *See* 35-A M.R.S. § 3482(4). Joint Petitioners anticipate that such "permanent" amendments would be the same, or substantially similar, as the emergency rule changes proposed in this Petition.

Accordingly, Joint Petitioners respectfully request that the Commission adopt the proposed emergency rulemaking changes proposed in this Petition, so that Joint Petitioners' requested changes are in effect until the Commission may adopt these changes pursuant to a non-emergency rulemaking proceeding.

I. PROCEDURAL BACKGROUND

Chapter 324 of the Commission's Rules establishes procedures and protocols for interconnections to utility distribution systems for small generators. The rule establishes requirements for four discrete generator categories: Level 1, Level 2, Level 3 and Level 4, including protocols for application and review procedures. Chapter 324 was last amended in 2021, when the Commission adopted amendments that, in part, modified the screening procedure for Level 2 interconnections.[2] In particular, the Commission adopted a new definition for "Aggregated Generation":

> "Aggregated Generation" means, as of the date of the Applicant's application, the following ICGF projects, in addition to the project proposed by the Applicant, that are or would be interconnected to the Radial Distribution Circuit: (i) all existing projects that are in-service; and (ii) all ICGFs that have paid the T&D Utility for *100% of interconnection-related costs attributable to it*, including costs for studies, distribution facilities, system upgrades, metering, and other items which the ICGF has cost responsibility.[3]

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[2] *Maine Public Utilities Commission*, *Amendments to Small Generation Interconnection Procedures*, Docket No. 2021-00167 (December 21, 2021) (the "2021 Chapter 324 Amendment Order").

[3] Chapter 324, § 2(A) (emphasis added); *see also* 2021 Chapter 324 Amendment Order at 4.

The definition of "Aggregated Generation" determines the assumed existing generation on the distribution system for purposes of the technical screens that a Level 2 interconnection request must pass before it may proceed. *See*, *e.g.*, Ch. 324, § 7(A)-(C), (E), (H). Put simply, the less "Aggregated Generation" assumed, the more likely that a given Level 2 interconnection request will pass the screen.

The Commission sought to strike a balance between allowing smaller Level 2 projects to proceed, against the interests of pending interconnection requests for larger projects.[4] The Commission considered but declined to adopt a definition of "Aggregated Generation" proposed by the T&D Utilities, MREA, and CCSA that would have assumed and included any earlier generating facilities with executed interconnection agreements.[5] Instead, the Commission determined that a pending interconnection request must also have paid "100% of interconnection-related costs attributable to it" in order to be considered "Aggregated Generation," which costs are to include both "distribution costs *and associated transmission costs* pursuant to ISO-NE."[6,7] The Commission determined that payment of interconnection costs indicated a larger Level 4 project had displayed sufficient certainty that it would reach commercial operation.[8] For similar reasons, the Commission also declined to lower the maximum capacity size for a Level 2 project from 2 MW to 500 kW.[9]

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4 *Id.* at 2.

5 *Id.* at 4.

6 *Id.* at 4 n.1 (emphasis added).

7 The Joint Petitioners recognize that the Commission has recently clarified that Projects that have paid 100% of known distribution costs "identified following completion of required studies under Chapter 324 shall be counted as 'aggregated generation' under Chapter 324 … ." *Central Maine Power Company, Request for Approval Waiver of Chapter 324*, Docket No. 2020-00211, Order Clarifying Order Granting Waiver, at 1-2 (Oct. 20, 2022). Joint Petitioners' wish to codify this Order into the requested amended Chapter 324.

8 *Id.* at 4.

9 *Id.* at 2-3.

Around the time of the Chapter 324 rulemaking, CMP also filed a request for an advisory ruling seeking guidance on how to implement a prior advisory ruling that addressed a Level 2 interconnection request and "Aggregated Generation." CMP raised questions and concerns that Level 2 projects could "leapfrog" Level 4 projects with executed interconnection agreements, and that this "leapfrogging" could negatively affect the ISO New England Section I.3.9 cluster study ("I.3.9 Cluster Study") process and create uncertainty about cost responsibility for additional upgrades required after considering the new Level 2 project. The Commission's General Counsel issued a Procedural Order stating that the Commission would not issue another advisory ruling and that the issues raised had been addressed in prior advisory rulings and the Chapter 324 amendment. CMP appealed, and the Commission issued an order declining to issue a further advisory ruling. In response to CMP's questions about allocation of costs between Level 2 and Level 4 projects, the Commission's order stated that "Chapter 324 does not provide for any mechanism whereby Level 2 projects can be forced to pay for possible restudies or upgrades required by Level 4 projects."[10] The Commission's Order did note that the Commission intended to open another Chapter 324 rulemaking that could address or explore the issues raised by CMP.[11]

More recently, the Commission has been asked to consider requests for waivers arising from the potential for a Level 2 project to "leapfrog" a Level 4 project awaiting the results of an I.3.9 Cluster Study before it has the opportunity to pay 100% of its interconnection costs. One Level 4 project owner requested and received a limited waiver to postpone a restudy triggered by a Level 2 project to avoid the possibility of needing multiple restudies caused by subsequent

[10] *Central Maine Power Company*, *Petition for Advisory Ruling Regarding Implementation of Requirements for Aggregated Generation*, Docket No. 2021-00372, Order on Appeal of Procedural Order, at 8 (May 19, 2022).

[11] *Id.*

Level 2 projects while the Level 4 project awaited the results of a cluster study.[12] Another Level 4 project requested a waiver of Chapter 324 to be considered "Aggregated Generation" for its substation, if the project paid 100% of its estimated distribution level costs.[13] The Joint Petitioners expect similar requested waivers, on these or other pending open issues, will continue until the rule is amended.

II. LEGAL, FACTUAL AND POLICY BASIS FOR EMERGENCY RULEMAKING

The T&D Utilities have seen a significant increase in Level 2 interconnection requests (especially larger Level 2 interconnection requests) since the Commission adopted the new definition of "Aggregated Generation" in Chapter 324. According to CMP's tracking spreadsheet for Level 2 requests, CMP had received more than 110 Level 2 interconnection requests between January 1, 2022 and August 23, 2022.[14] The majority of these requests are more than 500 kW, with many of those just under 1 MW. Although many of the Level 2 requests failed the initial technical screens, a significant number of those requests have passed after additional review. This additional review has resulted in the approval of 20 Level 2 interconnections at CMP that would have otherwise been denied.

Many of these more recent Level 2 interconnection requests appear to be attempts to locate and take advantage of capacity "headroom" on the distribution system that had been assumed in system impact studies for pending Level 4 interconnection requests. Each Level 2 project that "leapfrogs" a Level 4 project forces a restudy of the Level 4 project, and it is possible that a Level 4

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[12] *Borrego Solar Systems, Inc.*, *Request for Approval of Waiver of Chapter 324*, Docket No. 2022-00192, Order Granting Waiver, at 1-2 (August 29, 2022).

[13] *Penobscot Narrows Solar, LLC*, *Request for Waiver Regarding Chapter 324 (Aggregated Generation Screening)*, Docket No. 2022- 00262, Petition for Waiver (August 12, 2022).

[14] Available at https://www.cmpco.com/wps/portal/cmp/networksfooter/suppliersandpartners/servicesandresources/interconnection/, under "Level 2 Application Tracker" (accessed October 11, 2022).

project awaiting a cluster study result could be "leapfrogged" by several Level 2 projects and need to undergo several restudies. This possibility introduces considerable uncertainty to all pending Level 4 interconnection requests that have executed interconnection agreements but have not yet been invoiced for transmission upgrade costs and therefore unable to pay 100% of their interconnection-related costs. Even a Level 4 project that has received a cluster study result and Section I.3.9 approval from ISO New England might still be awaiting final cost invoicing and therefore cannot make the 100% payment and thereby eliminate the uncertainty that a Level 2 project will bypass it.

The high number of Level 2 interconnection requests, especially for projects just under 1 MW, and significant disruption and uncertainty caused for Level 4 projects in cluster studies appear to be unintended consequences of the adoption of the "Aggregated Generation" definition, in combination with the wait for cluster studies to be processed. There are many Level 4 projects with executed interconnection agreements that are awaiting cluster study results and cannot make the 100% interconnection payment, as costs are still unknown, which creates a large pool of projects vulnerable to being "leapfrogged" by a Level 2 project. Likewise, Level 2 projects just below 1 MW have become very attractive for their ability to forgo full distribution level study and costs as well as the ISO New England Section I.3.9 study process and costs, although in aggregate, they can have an adverse impact on the transmission system. The scenario presents an immediate threat to public welfare and justifies the adoption of these proposed amendments through an emergency rulemaking.

III. DESCRIPTION OF PROPOSED RULE AMENDMENTS

The proposed emergency rule amendments seek to rebalance the interests of Level 2 and mature Level 4 projects, by (A) codifying the Commission's clarification of the rule to allow Level 4 projects that have paid 100% of distribution costs (but not transmission costs) to be

considered "Aggregated Generation," and clarifying the timing and process for Level 4 projects requesting an invoice for 100% of distribution costs while awaiting the results of a Section I.3.9 cluster study, (B) reducing the maximum size of a Level 2 project from 2 MW to 1 MW, and (C) introducing a site control requirement on certain Level 2 interconnection requests, to reduce the number of speculative Level 2 requests.

A. **Consider the payment of distribution costs to constitute "Aggregated Generation**." The current language of the Rule states that Level 4 projects can be considered "Aggregated Generation" and preserve their queue position by paying 100% of their "interconnection-related costs," which the Commission's 2021 Order Adopting Amendments had stated meant distribution *and transmission* costs.[15] The T&D Utilities therefore did not consider a Level 4 project to be "Aggregated Generation" if it was in a Section I.3.9 cluster study to determine if it would incur costs for transmission upgrades. These Level 4 projects therefore have no recourse to prevent a Level 2 project from being approved for interconnection ahead of the Level 4 project during the cluster study, which then requires the Level 4 project to undergo a restudy of distribution-level upgrades and could introduce unanticipated distribution-level upgrades. The Commission recently issued an order clarifying that a project in a Section I.3.9 cluster study could be considered "Aggregated Generation" by paying 100% of estimated distribution costs.[16] The proposed emergency amendments to Chapter 324 would codify this clarification in the rule itself and preserve the Level 4 project's queue position upon issuance of an invoice to Level 4 projects for 100% of the estimated distribution upgrade costs upon request.

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[15] *See* 2021 Chapter 324 Amendment Order at 4.

[16] *Central Maine Power Company, Request for Approval Waiver of Chapter 324*, Docket No. 2020-00211, Order Clarifying Order Granting Waiver, at 1-2 (Oct. 20, 2022).

To codify this clarification, the proposed emergency rule amends the definition of "Aggregated Generation" in Chapter 324, Section 2(A) as follows:

> **Aggregated Generation.** "Aggregated Generation" means, as of the date of the Applicant's application, the following ICGF projects, in addition to the project proposed by the Applicant, that are or would be interconnected to the Radial Distribution Circuit: (i) all existing projects that are in-service; and (ii) all ICGFs that have an executed Interconnection Agreement and have requested and paid an invoice from the T&D Utility in accordance with § 12(T) for 100% of interconnection-related costs attributable to it as a result of studies performed pursuant to this Chapter, including costs for Distribution Upgrades and Interconnection Facilities for the ICGF, including the ICGF's allocated portion of Contingent Upgrades, if any.

In addition to the proposed amendment to "Aggregated Generation," there are also proposed amendments to Section 10(A) and Section 12(T) providing that any new Level 2 interconnection request will be placed on hold if submitted during the time period between a Level 4 project's request for an invoice for 100% of distribution costs and payment of the invoice (or expiration of the payment deadline). Based on the current rule language, there is a period of uncertainty between the issuance of an invoice to a Level 4 project for interconnection costs, and the date the T&D Utility receives that payment. During this lag, the Level 4 project does not know whether it has been "leapfrogged" by a Level 2 project and may be subject to a restudy. In practice, this means that a Level 4 project must obtain internal or financing approvals to send the T&D Utility a six- or seven-figure check without knowing whether additional restudies will be required by a "leapfrogging" Level 2 project. Placement of incoming Level 2 interconnection requests on hold pending a Level 4 projects payment of an issued invoice for 100% of costs will eliminate this period of uncertainty. The Level 2 project will be taken off "hold" and proceed after the Level 4 project makes its payment (or the payment deadline expires).

The proposed emergency rule also clarifies the timing and process for a Level 4 project with an executed interconnection agreement to request and pay an invoice for 100% of the distribution-level costs, which is particularly important for those projects awaiting the results of

an I.3.9 Cluster Study.[17] This change adds language expressly allowing a project to request, and a T&D Utility to issue, an invoice for 100% of distribution-level costs only. It also clarifies that the T&D Utility will not engage in design, engineering, or construction work until after the I.3.9 Cluster Study concludes and the cost allocation for any transmission upgrades has been determined. The language accomplishing this change has been added to Chapter 324, Section 12(T):

> An Applicant with an executed Interconnection Agreement may request that the T&D Utility issue an invoice to the Applicant for 100% of quoted costs of the Distribution Upgrades and Interconnection Facilities for the ICGF, including the ICGF's allocated portion of Contingent Upgrades, if any. The T&D Utility shall issue such invoice to the Applicant within ten (10) Business Days of receiving Applicant's request. The invoice shall be due within thirty (30) calendar days of receipt. Any Level 2 project that applies during this time to interconnect ahead of such project, shall be placed on hold until such time as Interconnection Customer has paid such invoice, or the 30 calendar days have passed, whichever occurs first. If the ICGF is awaiting the study of significant adverse effects on transmission facilities, then, upon Applicant's request, the T&D Utility shall not undertake or incur any costs for design, engineering, procurement, construction or other work related to the Interconnection Facilities or Distribution Upgrades, with the exception of administrative costs, until after the conclusion of the study of significant adverse effects on transmission facilities and determination of the need and costs for additional mitigation to avoid significant adverse effects, if any.

Section 13(I) already allows for a refund of deposited amounts without further liability of the 100% payment if a project cancels its interconnection agreement (including, for instance, after learning of cost-prohibitive transmission-level upgrades required as a result of the I.3.9 Cluster Study), less any costs accrued by the T&D Utility, including any administrative charges – which should be minimal given limited work is occurring pending the I.3.9 Cluster Study. Posting a deposit of 100% of quoted distribution-level costs represents a serious commitment to develop a project, even

[17] The Commission has previously granted a waiver of Chapter 324 to allow the T&D Utilities to postpone issuing interconnection design and construction invoices until after a project has received approval under ISO New England Section I.3.9, including those projects in cluster studies. *Central Maine Power Company*, *Request for Approval of Waiver of Chapter 324*, Docket No. 2020-00211, Order Granting Waiver (Sept. 30, 2020).

if the unused portion of a deposit could be refunded upon project cancellation.[18] For most Level 4 projects, the deposit will represent hundreds of thousands of dollars that cannot be used as development capital for other projects, and as such imposes a significant opportunity cost on the project owner.

B. **Reduce the maximum size of Level 2 projects from 2 MW to 1 MW.** The current 2 MW size limit for Level 2 projects in Chapter 324 originated with the model interconnection procedures of the Interstate Renewable Energy Council ("IREC"). Although the default 2 MW size can be a useful line in other regions, it does not align with the breakdown between distribution and transmission in Maine and New England and has a negative impact both on projects greater than 2 MW and less than 1 MW. Prioritizing projects less than 1 MW on the distribution system can enable more rapid deployment of these projects that generally do not require studies under Section I.3.9 of the ISO New England tariff.[19] In contrast, projects sized between 1 MW and 2 MW may require study under Section I.3.9, which in most areas of Maine likely would be through a cluster study. Allowing 1 MW to 2 MW projects qualify for the expedited treatment as Level 2 projects sets up a dynamic where a 1 MW to 2 MW project can "leapfrog" an existing Level 4 project in the distribution-level queue and utilize distribution system capacity previously assumed for that Level 4 project, while the Level 2 project is then behind the Level 4 project in the ISO New England Section I.3.9 study process for transmission-level effects. The Level 4 project would then need a distribution-level restudy that assumes the existence of the Level 2 project that likely will need to wait a year or more for results from a cluster study (and then may not proceed if

[18] Level 2 projects that apply during the time in between invoicing and payment will be placed on hold until the pending Level 4 project has paid, the due date for payment has passed, or the Level 4 project has indicated it will not be completing the invoice.

[19] ISO New England, *Planning Procedure No. 5-1*: *Procedure for Review of Market Participant's or Transmission Owner's Proposed Plans*, at Section 2.1 (see table stating that new generation less than or equal to 1 MW does not require a proposed plan application under Section I.3.9).

allocated costs for transmission-level upgrades).

Simply put, because of the relevant threshold in the ISO New England tariff and planning procedures for study under Section I.3.9, a Level 2 project between 1 MW and 2 MW would be no more likely to become operational than an earlier Level 4 project. Accordingly, the proposed emergency rule aligns the relevant capacity threshold for Level 2 status in Chapter 324 with the relevant threshold for avoiding transmission-level upgrades under ISO New England regulations – namely, at 1 MW.

C. **Require site control for Level 2 applications greater than 250 kW**. The proposed emergency rule introduces a site control requirement for Level 2 interconnection applications. This will introduce a minimal feasibility prerequisite intended to reduce the number of speculative Level 2 interconnection requests probing for distribution system capacity where no other project has yet been able to make a 100% payment. At present, it is possible for a developer to submit a series of Level 2 interconnection requests for hypothetical projects, learn where a certain size project passes the Level 2 screens, and then seek to secure site control and other development prerequisites. This increases the burden on the T&D Utility interconnection teams and could also lead to restudies of mature Level 4 projects where the Level 2 applicant is not committed to actually developing the Level 2 project. A more nefarious tactic allowed under the current rule is for a competing developer to impede a rival's Level 4 interconnection project by submitting a Level 2 interconnection request on the same substation. A requirement to show site control makes it much harder for a potential developer to spray a part of the grid with a series of speculative Level 2 requests. Yet site control is an easy showing to make for the owner or lessee of a given property or building, and therefore will not burden landowners or commercial tenants who wish to install a generation facility on site.

The proposed emergency rule language on Level 2 site control in Section 10(A) tracks the language used to introduce a site control requirement for Level 4 projects in Section 12(A) in 2020. There is also a site control transition provision that applies the site control requirement to pending Level 2 applications at the time the emergency rule amendment is adopted.

IV. CONTACT INFORMATION

Pursuant to Section 6(B)(2)(c) and (d) of Chapter 110 of the Commission's Rules of Practice and Procedure, the signatures, printed names, and mailing addresses of all Joint Petitions appear below. Pursuant to Section 6(B)(2)(e) of Chapter 110 of the Commission's Rules of Practice and Procedure, the name, address and telephone number of the persons and organizations among Joint Petitioners designated as contacts with whom the Commission may communicate on all matters affecting the Proposed Rule are as follows:

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V. CONCLUSION

Joint Petitioners appreciate the opportunity to file this Joint Petition to address the urgent issue of screening Level 2 projects in the Chapter 324 interconnection process. Joint Petitioners look forward to participating in this emergency rulemaking procedure.

Respectfully submitted,

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