

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2021-00369

December 22, 2023

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

ORDER TERMINATING
PROCUREMENT

BARTLETT, Chairman; and SCULLY, Commissioner¹

I. SUMMARY

Through this Order the Commission terminates the procurement initiated by the Request for Proposals (RFP) issued in this docket on November 29, 2021 to implement the Northern Maine Renewable Energy Development Program (Northern Maine Program) pursuant to 35-A M.R.S. § 3210-I.

II. BACKGROUND AND PROCEDURAL HISTORY

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 M.R.S. § 3210-I (the Act), which established the Northern Maine Program. The Act requires the Commission to issue an RFP for: (1) the development and construction of a 345-kilovolt double circuit “generation connection line” or a transmission line or lines of greater capacity, to connect renewable energy resources located in northern Maine with the electric grid operated by ISO-NE; and (2) the development and construction of renewable energy generation projects that are designed to connect to and transmit power across the transmission line or lines procured. 35-A M.R.S. §§ 3210-I(2), (3).

On November 29, 2021 the Commission issued the RFP calling for both transmission and generation proposals. The Commission received a number of timely proposals for transmission projects on or before March 1, 2022 and then a number of timely proposals for renewable generation projects on or before May 2, 2022.²

¹ Commissioner Gilbert recused herself from this proceeding.

² The transmission and generation bids due dates were staggered, with bids to construct transmission projects being due first so that relevant information could be provided to prospective generation project bidders.

The Commission, in an Order Approving Term Sheets issued on November 1, 2022, selected a transmission project submitted by LS Power Grid Maine (LS Power) and the King Pine Wind Generation Project submitted by Longroad Development Company, LLC ("Longroad"). This selection was based on the Commission's determination that these projects, developed and contracted with in accordance with the prices and terms set forth in their respective term sheets, represented the optimum choice pursuant to the statutory criteria. Order Approving Term Sheets at 1.

In selecting LS Power and King Pine, however, the Commission noted that while the combination of the two selected projects was the best option, it was more difficult to assess whether Maine ratepayers should bear the full cost of these two projects, the major component of which is the cost of transmission. *Id.* at 10. Observing that Massachusetts had recently enacted legislation which provided an opportunity for that State to coordinate with Maine on the procurement of transmission and generation for the Northern Maine Program,³ the Commission reserved for later determination how much of the projects Maine ratepayers should fund. *Id.* at 10-11. The Commission intended that this would allow 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 cost for these projects. *Id.* at 11.

On December 30, 2022, the Massachusetts Department of Energy Resources (DOER) filed in this docket its determination that the LS Power and Longroad projects would, if certain conditions were met, satisfy the applicable Massachusetts legislative requirements for coordinating with the procurement to implement the Northern Maine Program. DOER thus advised that Massachusetts would direct its electric distribution companies (EDCs) to enter into long-term contracts for up to 40 percent of the Longroad King Pine project's electric generation and renewable energy credit production and up to 40 percent of the LS Power transmission project's transmission service payments for 20 years or less.

In an Order Regarding Massachusetts Determination issued on February 3, 2023, the Commission directed its Staff to work with LS Power, Longroad, Central Maine Power Company (CMP), and Versant Power (Versant) in the negotiation of a Transmission Service Agreement (TSA) and a Power Purchase Agreement (PPA) for 60 percent of the LS Power and Longroad projects, to be consistent with the approved term sheets. In the event that such negotiations were successful, CMP and Versant (one or both of which would be the counterparties to the TSA and PPA) were to file final versions of these agreements by June 30, 2023 for approval by the Commission.

Commission Staff, in a Procedural Order issued on October 30, 2023, described how neither the TSA nor the PPA had been finalized or filed for Commission approval. In particular, Staff reported that there appear to be significant differences among the parties and Staff regarding key terms of the TSA and that these differences remain

³ An Act Driving Clean Energy and Offshore Wind (C. 179 of the Acts of 2022) and Section 82 thereof.

notwithstanding months of discussion, negotiation, and related efforts to resolve them. In order to put this issue before the Commission for resolution, LS Power was directed to: (1) review a draft TSA prepared by Staff (Staff TSA) and provide all modifications LS Power would require to execute that Staff TSA; and (2) file any other TSA that LS Power proposed as the final form of an agreement that it would be prepared to execute, together with any explanatory materials it wished the Commission to consider. The October 30th Procedural Order also directed CMP and Versant to file comments in response to any submissions made by LS Power, after which the Commission would consider what, if any, TSA it would approve for execution by LS Power and either or both of CMP and Versant.

On November 10, 2023, LS Power filed confidential versions of: (1) a proposed Transmission Agreement; (2) a brief containing a petition that the Commission approve the proposed agreement and argument in favor of such approval; and (3) studies prepared by Daymark Energy Advisors and Wallace Economic Advisers, LLC quantifying benefits that these entities predicted the LS Power and Longroad projects would provide to Maine. LS Power did not provide any modifications to the Staff TSA. CMP and Versant filed responsive comments on December 1, 2023, together with proposed contractual language for a transmission agreement.

The Commission considered the issues related to a transmission agreement at its deliberative session held on December 21, 2023.

III. DISCUSSION AND DECISION

In its brief LS Power has made clear that it can no longer hold to the fixed price contained in its term sheet and that it requires a price adjustment. But nowhere in its brief or proposed Transmission Agreement does LS Power specify what the new price for its transmission project would need to be.

At a minimum, any contract the Commission would approve in this procurement must be consistent with the terms of the bidder's approved term sheet, which includes the binding price therein. By now requesting to change its price, a core component of the commitments made in its approved term sheet, LS Power has effectively withdrawn its original fixed-price bid. As a result, the Commission has no choice but to terminate this procurement. It would be fundamentally unfair to the other bidders to continue and permit LS Power to make a price adjustment, much less an unspecified one. Taking such a course would also be unfair to ratepayers, as the Commission has no assurance that the LS Power project would remain "the most cost-effective and efficient transmission access to renewable energy resources in Northern Maine." 35-A M.R.S. § 3210-I(2)(C)(1).⁴

⁴ The Commission notes that although its decision herein is based on LS Power's statement that it cannot hold to the fixed price approved in its term sheet, in the Transmission Agreement that LS Power submitted on November 10, 2023, it has also insisted on pricing contingencies that would shift a substantial amount of risk and thus

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.