

**STATE OF MAINE
PUBLIC UTILITIES COMMISSION**

Docket No. 2025-00050

August 4, 2025

**MAINE PUBLIC UTILITIES COMMISSION
Investigation into Indian Township Tribal
Government and Eastern Maine Electric
Cooperative Regarding Net Energy Billing**

**TRIBE’S RENEWED
OBJECTION TO FURTHER
DISCOVERY AND MOTION
FOR PROTECTIVE ORDER
STAYING DISCOVERY**

In light of Eastern Maine Electric Cooperative’s (“EMEC’s”) July 31, 2025, Response to the Commission’s Procedural Order Regarding Discovery (“Response”) in the above-captioned Investigation, the Indian Township Tribal Government (the “Tribe”) hereby renews its objection to, and moves for a protective order staying, further discovery pending the Commission’s adjudication of the threshold issues identified in its April 9, 2025, Procedural Order Requesting Briefs. In support of its objection and motion, the Tribe states as follows:

BACKGROUND

This Investigation primarily concerns the application of the Commission’s Rules to a proposed set of facts that have not yet come to pass. (*See* Notice of Investigation and Attachments; July 10, 2025, Tr. at 24, 40.) Although this dispute is fundamentally legal rather than factual, EMEC and its supportive intervenors have insisted from the start that they are entitled to extensive discovery before the Commission weighs in. (*See* March 11, 2025, Tr. at 7-9, 16; EMEC Statement of the Case; EMEC Objection to Lack of Discovery; July 10, 2025, Tr. at 28, 45, 50, 52.)

Despite the Tribe’s objections, (*see* March 11, 2025, Tr. at 12; Tribe’s Br. at 18; June 18, 2025, Tr. at 7-8; July 10, 2025, Tr. at 56, 118), the Commission has approved some of EMEC’s requests. Most notably, at a hearing on July 10, EMEC and its supportive intervenors cross-examined the Tribe’s witness on the full range of issues in this Investigation. (*See* July 10, 2025,

Tr. at 25-39, 42-54.) EMEC also propounded oral data requests upon the Tribe, which the Tribe has now responded to. (*See* ODR-001-001 to -004.)

But EMEC and its supportive intervenors have requested even more discovery. (*See* July 10, 2025, Tr. at 114-15.) At the July 10 hearing and in its July 16 Procedural Order regarding Outstanding Discovery Issues, the Commission requested that EMEC (1) “review the discovery requests contained in Attachment A” to its Statement of the Case, (2) “modify its requests in light of the information obtained at the hearing and which will be provided in response to the oral data requests,” and (3) submit modified discovery requests with an “explanation of why this information is essential to the determination as to whether the discrete electric generating facility definition applies to the Tribe’s proposal.” (July 16 Order at 2.)

EMEC has now submitted its Response to this request. In its Response, EMEC acknowledges that it has received most of the information it intended to seek in discovery, (*see* Response at 2-6), but argues that it still needs more discovery, (*see* Response at 7-11).

ARGUMENT

The Tribe objects to EMEC’s request for further discovery and accordingly moves for a protective order staying further discovery until the Commission can weigh in on the threshold legal issues identified in its April 9, 2025, Procedural Order Requesting Briefs. Further discovery is unnecessary to decide the threshold legal issues in this case; would impose an undue burden on the Tribe; and, contrary to EMEC’s assertions, is not required by the Due Process Clause.

Parties’ rights to discovery before the Commission are governed by the Maine Rules of Civil Procedure as modified by section 9(B) of Chapter 110 of the Commission’s Rules. 65-407 C.M.R. ch. 100, § 9(B). Maine Rule of Civil Procedure 26(b) provides the scope of discovery “[u]nless otherwise limited by order of the [Commission] in accordance with these rules.” And

Rule 26(c) permits the Commission to, “[u]pon motion by a party or by the person from whom discovery is sought, and for good cause shown, . . . make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense.” The Commission has broad discretion to grant a protective order limiting discovery. *See Est. of Kerwin*, 2020 ME 116, ¶ 13, 239 A.3d 623 (“The scope of discovery is always within the discretion of the court.”). It should do so here.

A. Further discovery is unnecessary.

This Investigation concerns the application of the Commission’s Rules to a proposed set of projects that are still in the early stages of development. (*See* Notice of Investigation and Attachments; July 10, 2025, Tr. at 24, 40.) This is primarily a question of law, not a question of fact. Development of these projects is currently stalled, and the Tribe has indicated that the manner in which it proceeds depends in large part upon the Commission’s decision here. (*See* July 10, 2025, Tr. at 24, 40.)

The Tribe has provided extensive information about the development process that has occurred so far. It provided a sworn affidavit averring to all of the factual information provided in its original Request for Advisory Ruling. (*See* Notice of Investigation and Attachments; Aff. of Trevor White.) It provided additional information on direct testimony and made its witness available for cross examination. (*See* July 10, 2025, Tr.) And it provided several hundred pages of emails and other documents in response to oral data requests propounded at the hearing. (*See* ODR-001-001 to -004.)

But EMEC argues that further discovery is necessary because “the Commission has to go through the thought process it went through when it decided to adopt the Nine Factor Test.” (Response at 10.) Notably, that process was not aided by discovery. The Commission developed

the nine-factor test in an Advisory Ruling based on assumed facts provided in a petition and in response to the Commission's requests for further information and comments. *See Pub. Utils. Comm'n*, Request for Advisory Ruling Regarding Chapters 312 and 313 Interpretation of Discrete Electric Generating Facility, Docket No. 2020-00006, Order (Mar. 23, 2020). The record here is much more substantial. (*See* July 10, 2025, Hearing Tr. at 115-16 ("MS. TAYLOR: . . . '[A]t the Commission . . . we deal with these discreteness issues on a very regular basis and . . . with far, far less information than the information that we received in this case so far.'").)

In sum, the information sought by EMEC has limited probative value when considered in light of the full record that has already been developed and the primarily legal, rather than factual, nature of the dispute. *Cf.* 2 Discovery Proceedings in Federal Court § 20:4 (3d ed.) ("One circumstance under which a protective order staying discovery may be granted [in federal court] is the pendency of a dispositive motion, such as a motion to dismiss or a motion for summary judgment.").

B. Further discovery would impose an undue burden upon the Tribe.

As the Tribe has noted throughout this proceeding, it cannot afford any more delay than is absolutely necessary to resolve the issues in this case. (*See, e.g.*, Tribe's June 6, 2025, Opposition Letter.) In addition to the normal costs of litigation, the Tribe risks losing the funding it has secured for the projects at issue in this proceeding. These projects depend upon federal grant funding, and the continued availability of that funding remains an open question. (*See* July 10, 2025, Tr. at 139-40); *see also* Press Release, U.S. EPA, EPA Administrator Lee Zeldin Cancels 400+ Grants in 4th Round of Cuts with DOGE, Saving Americans More than \$1.7B (Mar. 10, 2025) (last accessed Aug. 4, 2025) <https://www.epa.gov/newsreleases/epa-administrator-lee-zeldin-cancels-400-grants-4th-round-cuts-doge-saving-americans>. This Investigation has been pending for over seven

months. (See Notice of Investigation.) Each day that funds are not drawn down is a day that the Tribe risks losing those funds. Further delays for the purpose of conducting unnecessary discovery would thus impose an undue burden upon the Tribe.

C. The Due Process Clause does not require further discovery.

EMEC has also suggested throughout this proceeding that the lack of extensive discovery constitutes a violation of the Due Process Clause. (See Response at 2.) That is not so.

“Due process at the agency level does not require full trial-like procedures.” *Town of Jay v. Androscoggin Energy, LLC*, 2003 ME 64, ¶ 9, 822 A.2d 111. Rather, procedural due process is a “flexible concept” that requires an optimal balance of the following factors: (1) the private interests at stake; (2) the risk of an erroneous deprivation absent further proceedings; and (3) the government’s interest. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976); see *Fichter v. Bd. of Env’t Prot.*, 604 A.2d 433, 436-37 (Me. 1992) (explaining that “the administrative arena procedure can be adjusted to reflect the competing interests involved and the context of the hearing” and applying the *Mathews* factors to determine whether BEP provided due process to permit applicant). The *Mathews* factors do not support further discovery in this proceeding.

First, as to the private interest at stake, EMEC has asserted that construction of the projects proposed by the Tribe will result in significant cost increases for its customers. (See EMEC Statement of the Case at 8-10.) But the Tribe’s interests matter here, too. The Tribe expects that the projects it proposes will save ratepayers in Indian Township, one of the poorest communities in the state, over \$7 million in energy costs. (See Notice of Investigation Attachment at 4.) Thus, private interests do not weigh either in favor of or against further discovery.

Second, there is very little risk of erroneous deprivation here. EMEC has already had the opportunity to cross examine the Tribe’s witness and has propounded oral data requests upon the

Tribe. (See July 10, 2025, Tr.; ODR-001-001 to -004.) Further discovery would serve only to supplement the already extensive record in this Investigation, which concerns primarily legal, rather than factual, issues. *Cf. Me. Pub. Utils. Comm’n*, Investigation of Stranded Cost Rate Design, Docket No. 2022-00160, Procedural Order at 1 (Me. P.U.C. July 27, 2022) (explaining that prior procedural order comported with due process because it “presented ample opportunity for exploration of the issues in this case, which involve policy questions more prominently than issues of a factual or evidentiary nature.”).

Finally, the government’s interest weighs decisively against further discovery as well. The Commission’s valuable time and resources should not be spent on unnecessary proceedings. Thus, the balance of the *Mathews* factors tips away from allowing more discovery before the Commission weighs in on the threshold issues here.

CONCLUSION

For the foregoing reasons, the Tribe respectfully requests that the Commission deny EMEC’s request for further discovery. The Tribe also respectfully requests that the Commission issue a protective order staying discovery pending the Commission’s adjudication of the threshold legal issues identified in its April 9, 2025, Procedural Order.

Respectfully submitted,



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