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January 11, 2024

Maine Public Utilities Commission
18 State House Station
Augusta, ME 04333-0018

**RE: Request for Proposals for Renewable Energy Generation and Transmission Projects
Pursuant to the Northern Maine Renewable Energy Development Program
Docket No. 2021-00369**

Dear Chair Bartlett and Commissioner Scully:

I am writing on behalf of LS Power Grid Maine, LLC (“LS Power”) regarding the December 22, 2023 *Order Terminating Procurement* (“Order”) in the above referenced docket. We are disappointed that the Commission elected to terminate the procurement, but we accept this outcome and will not be appealing the Order. That said, I would like to clarify several items regarding the Northern Maine Renewable Energy Development Program.

The Order states that LS Power can “no longer hold to [its] fixed price” and that LS Power “requires a price adjustment,” but that LS Power did not specify what the new price might be. This statement lacks important context and may create a false impression that LS Power was walking away from the terms of our bid, when, in fact, our bid contemplated entering into a contract by November 1, 2022, over a year prior to the Order. This impression is particularly perplexing given the circumstances surrounding the procurement described further below and the significant time, effort, and expense that LS Power undertook in pursuit of this economically and environmentally beneficial project. LS Power takes seriously its bid commitments and has a demonstrated record nationwide of meeting those commitments, including with respect to price and schedule. To date, we have completed six large scale competitive transmission projects in five different RTOs across the United States on schedule and at a cost below our committed price.

LS Power submitted its Proposal in March 2022, with the reasonable expectation of having an approved contract by November 1, 2022, consistent with the Northern Maine Renewable Energy Development Program statute.¹ LS Power held its price since submitting its proposal, during a period of sharply higher inflation and interest rates, and supply chain disruptions. The Commission’s *Order Approving Term Sheets*, issued on November 1, 2022, provided only conditional approval of the Term Sheet based on whether Massachusetts would participate in the funding of the Project, but no signed contract. Further, the introduction of Massachusetts as a participant added delay due to the need to negotiate contracts in Massachusetts and have such contracts filed for approval in a contested case before the Massachusetts Department of Public Utilities, which would have added an additional year of uncertainty. After a year of delay, without signed contracts in either state, and having no certainty that contracts that would support project financing were even achievable, we could no longer hold our price or schedule. Despite our good faith efforts, the schedule and fixed price identified in the Term Sheet was no longer viable, because,

¹ Title 35-A M.R.S. § 3210-I (2021) required that the Commission approve a contract by no later than November 1, 2022.

absent executed, approved contracts, we could not enter into procurement contracts to mitigate the fixed-price risk.

The Commission's decision after the Term Sheet was finalized to add Massachusetts' participation introduced new risks and delays that were beyond LS Power's control, not within our fixed price, and not accounted for in the Term Sheet. Despite this unanticipated change, LS Power was eager to work with the Commission to bring the benefits of Massachusetts' participation to Maine at the same bid price. But to do so, the Commission would need to acknowledge the new development risks associated with Massachusetts' late participation and work with LS Power to mitigate the potential of funding gaps and delays associated with potentially inconsistent regulatory outcomes. A failure to acknowledge and address those newly imposed risks would be fatal to transmission project financing. LS Power never received satisfactory resolution of issues related to this complication imposed on it.

The Term Sheet approved by the Commission on November 1, 2022, assumed "customary commercial terms"² that would address "additional issues and related contractual rights and obligations"³ and support the financing of the transmission project. LS Power proposed a form of agreement that reflected customary terms for the electric transmission industry and project finance community, while also incorporating the fixed price included in LS Power's proposal. Our form agreement sought to honor the unique elements of a novel procurement in Maine that separately procured an open access transmission project and an unaffiliated generation project that would interconnect to the new transmission facilities. Our proposed agreement was wholly consistent with the Term Sheet, while providing Maine ratepayers the cost-effective benefits of a competitively procured project, and addressing the complexity associated with the post-Term Sheet participation of Massachusetts.

The Northern Maine Renewable Energy Development Program provides significant economic development benefits for Northern Maine, a backbone for Maine's decarbonized future, and cost savings for Maine ratepayers. A competitive selection process remains the best way to implement generation and transmission in Northern Maine. For a future procurement, we believe the likelihood of contract success could increase if the Commission acknowledges, at a minimum, the following principles: (1) transmission procurement and financing is fundamentally different from generation procurement and financing;⁴ (2) an RFP should include a commercially reasonable, financeable *pro forma* transmission agreement; and (3) the inclusion of additional states in the process (e.g., Massachusetts) must be addressed in the procurement itself. With these principles in mind, the Commission may then be able to accomplish the Legislature's directive while obtaining the cost benefits and ratepayer protections that come from competitive transmission procurement.

² *Northern Maine Docket*, Docket No. 2021-00369, Transmission Service Agreement Essential Terms, at 1 (Feb. 1, 2022).

³ LS Power Term Sheet at 1.

⁴ For example, under the now-terminated procurement, the transmission agreements in Maine (and Massachusetts) would collectively represent the one and only source of funding for the project. Upon reaching commercial operation, the transmission facilities would have become critical infrastructure with an obligation to serve and provide open access under the ISO-NE tariff and under Maine law. Operational control of the transmission facilities would have been turned over to ISO-NE, and ISO-NE would make planning and operational decisions with the assumption that the transmission project would "be there" going forward. If any of the five utility counterparties were to terminate, or if the Maine PUC and/or Massachusetts DPU denied LS Power the opportunity to recover certain incremental costs on a just and reasonable basis, LS Power could have been left without a source of revenue, but would still have an obligation to provide service. Such a funding gap would have been fatal to project financing for the transmission project.

ISO-NE and NESCOE are currently developing Phase 2 of the Longer-Term Transmission Planning Process, which includes provisions for transmission planning for public policy purposes, including regionalization or participation from multiple states. Maine might consider that process as an effective way to implement the transmission procurement under the Northern Maine Renewable Energy Development Program. As currently contemplated, that process would include the possibility of regionalization or participation from multiple states. Although still in development, the process would be implemented by tariff instead of by contract, which would address many of the complications and issues identified during contract negotiations, while still capturing for Maine the benefits of competitive procurement, cost containment, and, if applicable, multistate participation. Developers would benefit from (a) a risk profile that was known upfront and (b) having a more straightforward tariff-based funding mechanism that more closely matches successful competitive transmission procurements seen in other states and RTOs and one that has yielded a proven model for successful financing and development.

We continue to believe that this project is good for Maine and that LS Power is well suited to meet the challenges that face transmission development in Northern Maine. We look forward to the possibility of working with Maine in transmission implementation in the future.

We appreciate the time and effort that the Commission and its Staff have devoted to the procurement.

Very truly yours,



Paul Thessen
President
LS Power Grid Maine, LLC