# MAINE STATE LEGISLATURE



STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Philip L. Bartlett, II
CHAIRMAN

R. Bruce Williamson
Randall D. Davis
COMMISSIONERS

Harry Lanphear
ADM NISTRATIVE DIRECTOR

November 10, 2020

Honorable Mark W. Lawrence, Senate Chair
Honorable Seth A. Berry, House Chair
Energy, Utilities and Technology Committee
100 State House Station
Augusta, Maine 04333

**Re: Reports on the Effectiveness of Net Energy Billing in Achieving State Policy Goals and Providing Benefits to Ratepayers, and Renewable Distributed Generation Solicitation**

Dear Senator Lawrence and Representative Berry:

Pursuant to Public Law 2019, Chapter 478, the "Act To Promote Solar Energy Projects and Distributed Generation Resources in Maine", on February 28, 2020 the Maine Public Utilities Commission issued its Procurement Announcement for the first block of distributed renewable generation projects. As directed by the Act, this solicitation was to be the first in a series of five solicitations that would collectively obtain a total of 375 megawatts (MW) from renewable generation projects, each of less than 5 MW in size.

For reasons explained in the attached report, the Commission, in an Order issued on August 28, 2020, found that the first block procurement was not competitive pursuant to the standards set forth in the Act, Chapter 312 of the Commission's rules, and the Commission's Procurement Announcement. The Act requires that, if no bids are accepted under the first solicitation, the Commission will conduct a new competitive procurement within nine months as well as study the reasons for the inability of the procurement to secure the target amount and submit a report of its findings and any recommended legislation to the Legislature.

The Commission hereby submits its report including recommendations for the Legislature to consider for improving the competitiveness of future solicitations.

At the same time, the Commission hereby submits the report called for by section A-6 of the same Act, which contains an evaluation provision that specifies:

> *The Public Utilities Commission shall evaluate net energy billing under the Maine Revised Statutes, Title 35-A, section 3209-A when the total amount of generation capacity involved in net energy billing in the State reaches 10% of the total maximum load of transmission and distribution utilities in the State or 3 years after the effective date of this Act, whichever comes first. The commission shall evaluate the effectiveness of net energy billing in achieving state policy goals and providing benefits to ratepayers and submit a report to the joint standing committee of the Legislature having jurisdiction over energy matters with its findings.*

Upon notice that the 10% threshold had been met, the Commission initiated its evaluation of the NEB program as required by statute. As required by the Act, the Commission considered State policy goals relevant to the NEB program and examined potential electricity rate impacts resulting from the NEB program.

In the Report on the Effectiveness of Net Energy Billing in Achieving State Policy Goals and Providing Benefits to Ratepayers, the Commission concludes that energy goals of increasing resource diversity through renewable resource generation, the promotion of solar generation and addressing climate change are promoted to a significant degree by the NEB program. However, the Commission also concludes that the current NEB program will result in substantial increases in electric rates. Based on these findings, the Commission identifies several recommendations for your consideration.

If you have any questions about either of these two reports, please do not hesitate to contact us.

Sincerely,

Philip L. Bartlett II, Chairman

On behalf of the Chairman
R. Bruce Williamson, Commissioner
Randall D. Davis, Commissioner
Maine Public Utilities Commission

Attachment
cc: Energy, Utilities and Technology Committee Members
Lucia Nixon, Legislative Analyst

# MAINE PUBLIC UTILITIES COMMISSION

# Report on Renewable Distributed Generation Solicitation

## pursuant to

## An Act To Promote Solar Energy Projects and Distributed Generation Resources in Maine

## (P.L. 2019, Chapter 478)

**Presented to the**
**Joint Standing Committee on**
**Energy, Utilities and Technology**
**November 10, 2020**

## I. EXECUTIVE SUMMARY

On February 28, 2020, the Maine Public Utilities Commission (MPUC) issued its Procurement Announcement for the first block (Block 1) of distributed renewable generation projects pursuant to the "Act To Promote Solar Energy Projects and Distributed Generation Resources in Maine" (P.L. 2019, Chapter 478 (Act)). As directed by the Act, this solicitation was to be the first in a series of five solicitations that would collectively obtain a total of 375 megawatts (MW) from renewable generation projects, each of less than 5 MW in size.

On August 28, 2020, the Commission issued its Order (Attachment A to this report) finding that this Block 1 procurement was not competitive pursuant to the standards set forth in the Act, Chapter 312 of the Commission's rules, and the Commission's Procurement Announcement.[1] The Commission based its decision on:

- The significant level of attrition in the number of bidders and projects that occurred during each stage of the procurement;
- The observed bid prices and bidding behavior, as well as the ultimate clearing price of greater than 19 cents per kWh, which indicated that the Block 1 bidding did not reflect cost-based bids; and
- Accepting excessively high prices to set the clearing price for Block 1 would drive the results of the remaining four rounds of DG procurement and result in significant costs to ratepayers.

The Act requires that, if no bids are accepted under the first solicitation, the Commission will conduct a new competitive procurement within nine months as well as study the reasons for the inability of the procurement to secure the target amount and submit a report of its findings and any recommended legislation to the Legislature. The Commission hereby provides the following recommendations for the Legislature to consider for improving the competitiveness of future solicitations:

- Recommendation #1 – Consider modifying the uniform clearing auction structure of the procurement to an alternative structure that promotes bids reflective of actual project costs and does not tie procurement pricing to that of preceding blocks;
- Recommendation #2 – Consider replacing the requirement for the project sponsor to have obtained all federal, state, and local approvals and permits with a requirement that the project sponsor has submitted completed applications for all such approvals;
- Recommendation #3 – Consider making explicit that projects that need ISO-NE I.3.9 approval prior to interconnecting may bid if they have an otherwise unconditional executed interconnection agreement.

[1] *Competitive Procurement for the Output of Distributed Generation (P.L. 2019, ch. 478, Part B)*, Docket No. 2020-00014, Order (Aug. 28, 2020) (DG Order).

## II. DESCRIPTON AND REQUIREMENTS OF THE ACT

### A. Procurement Structure of the Act

During its 2019 session, the Legislature enacted an Act To Promote Solar Energy Projects and Distributed Generation Resources in Maine, P.L. 2019, Chapter 478 (Act).[2] Part B of the Act, now codified at 35-A M.R.S. §§ 3481-3488, created a distributed generation procurement process that requires the Commission to solicit and procure targeted amounts of energy, capacity and renewable energy credits (RECs) from developers of renewable distributed generation (DG) facilities of less than 5 MWs[3]. These procurements are to be accomplished through award by the Commission of 20-year contracts between the selected projects and the appropriate investor-owned electric transmission and distribution utility (T&D utility), either Central Maine Power (CMP) or Versant Power (Versant).

The Act established two DG program categories:

1) "Shared DG" with a total target amount of 250 MW; and
2) "Commercial or Institutional (C/I) DG" with a total target amount of 125 MW.

Under these programs, either the "subscribers" (customers with a proportional interest in a Shared DG project) or a commercial or industrial customer (C/I) participating in a C/I DG project, receive credits on their electric bill equal to the contract rate multiplied by the subscriber's share of the project output (for Shared DG projects) or the entire project's output (for C/I DG projects). The net benefits ultimately retained by a customer will depend on the specifics of the customer's contractual arrangement with a project developer.[4]

The total target amounts in each category are to be procured over five separate procurement rounds with each procurement block's targeted amount to be one-fifth of the aggregate total targeted amount to be procured.[5]

The Act provides that the contract rate to be paid to all projects selected in the first procurement round (Block 1) will be equal to the highest accepted bid price (i.e., the "uniform clearing price") in each of the two program categories. The price to be paid for projects in each subsequent procurement round (Rounds 2 – 5) will be equal to 97% of the applicable price for the immediately prior block.

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[2] As required by the Act, the Commission adopted rules (Chapter 312) to implement the DG programs, including the procurement processes established by the Act. *Maine Public Utilities Commission, Adoption of Distributed Generation Procurement Rules – Chapter 312,* Docket No. 2019-00219, Order Adopting Rule and Statement of Factual and Policy Basis (Dec. 11, 2019).

[3] The Act also set forth a revised Net Energy Billing (NEB) program that is the subject of a separate Commission report to the Legislature. See "Report on Net Energy Billing pursuant to An Act To Promote Solar Energy Projects and Distributed Generation Resources in Maine (P.L. 2019, Chapter 478)" dated November 9, 2020.

[4] Other than certain required disclosures, the contractual arrangements between customers and project developers are not regulated by the Commission.

[5] The Commission is allowed by the Act to accept bids in excess of the first block target if it was determined to be in the public interest.

The Act also requires the Commission to establish standards to ensure that each round of the procurement process had a sufficient number of unique bidders and a quantity of qualified bids to be determined competitive.

B. Timing Requirements of the Act

The Act required bidders to submit bid prices for the initial Block 1 procurement during a 30-day bid acceptance period beginning no later than July 1, 2020, followed by a Commission decision issued no later than 30 days after the end of the bid acceptance period.

The Act also required the Commission to immediately open the procurement for Block 2 after the conclusion of Block 1, unless no bids were accepted in Block 1. In the event no bids were accepted for Block 1, the Act provides that the Commission will conduct a new initial competitive procurement within nine months, as well as study and report the reasons for the procurement's failure to secure the target amount and any recommended legislation. This report is submitted in response to this requirement.

C. Bidder and Project Qualifications of the Act

The Act requires that in order to be qualified to bid, a project must have:

**TABLE 1**

| |
|---|
| 1. Demonstration of site control; |
| 2. A fully executed interconnection service agreement with a T&D utility; |
| 3. Demonstration that all required federal, state and local approvals and non-ministerial permits for the project have been obtained; |
| 4. The capacity to make a financial assurance deposit at the time a contract is signed; |
| 5. For a C/I DG resources procurement, if a participating commercial or institutional customer is not the party making the bid, an agreement from a customer that would receive bill credits pursuant to the provisions of the Act; |
| 6. For Shared DG resources procurement, demonstration of experience fulfilling the obligation to subscribers of shared distributed generation resources;[6] |
| 7. For Shared DG resources, minimum subscription requirements:<br>a) the subscriptions must be sized to represent at least one kilowatt of the resource's generating capacity;<br>b) at least 50%[7] of the total nameplate capacity of a Shared DG resource must be subscribed by subscriptions of 25 kilowatts or less; and<br>c) at least 10% of the total nameplate capacity of a Shared DG resource must be subscribed by households with low or moderate income. |

[6] The Act also requires that for Shared DG projects, the Commission establish consumer protection standards to protect subscribers from fraud and other unfair and deceptive business practices and that potential subscribers be provided disclosures relating to the requirements and risks of participation in the program.

[7] Or 20% if subscriptions from a municipality or units of municipal government account for more than 30% of the capacity, unless subscriptions from a municipality or units of municipal government account for more than 50% of the total capacity of a Shared DG project.

D. Cost and Benefits Recovery Mechanism of the Act

The Act contains a cost allocation mechanism, which requires CMP and Versant to implement a transparent mechanism to track and recover or distribute costs and benefits associated with participation in the DG programs. The utilities must submit these costs and benefits to the Commission on an annual basis to be recovered from ratepayers. The costs and benefits to be tracked and recovered include the utilities' incremental costs for participating in the DG program; all payments or bill credits from customers, subscribers and project developers; all revenue from sale of the output of DG resources procured.

## III. MPUC PROCUREMENT PROCESS

On December 11, 2019, the Commission issued its Order adopting the new rule (Chapter 312) governing the DG programs established by the Act, including the provisions related to the procurement processes. The Commission engaged Enel X North America, Inc. (Enel X) to assist with the administration of the procurement. On February 28, 2020, the Commission issued the Procurement Announcement for the initial Block 1 procurement, seeking 50 MW under the Shared DG program and 25 MW under the C/I DG program as required by the Act. From March 2020 through the end of June 2020, the Commission and Enel X conducted the procurement, answering numerous bidder questions and evaluating the qualifications of the bidders and projects. On July 1, 2020, the bid submission period commenced for qualified projects and concluded on July 30, 2020 as required by the Act. On August 28, 2020, the Commission issued its Order on the results of Block 1.

## IV. COMMISSION'S FINDINGS ON THE INTIAL BLOCK 1 PROCUREMENT

The Commission's August 28, 2020 Order (Attachment A to this report) concluded that this initial Block 1 procurement was not competitive pursuant to the standards set forth in the Act, Chapter 312 of the Commission's rules, and the Commission's Procurement Announcement. Consequently, the Commission did not accept bids from this initial Block 1 procurement.[8] The basis for the determination are summarized below:

A. Attrition in Bidders and Projects

From the initial qualification phase of the solicitation through to the submission of bid offer rates, there was significant attrition in the number of bidders and projects. The total number of bidders that submitted bids in the Shared DG and C/I DG sectors combined reflected a reduction of nearly 80% as compared to the number that submitted bidder applications. In addition, the bids that were submitted represented a 67% reduction from the number of initial project applications.

[8] *Competitive Procurement for the Output of Distributed Generation (P.L. 2019, ch. 478, Part B)*, Docket No. 2020-00014, Order (Aug. 28, 2020) (DG Order).

B. Bidding Behavior and Prices Indicated Bids Were Not Cost Based

The observed bid prices in Block 1 indicated non-competitive bidding behavior. Most notably, the Commission observed that several of the very same projects that have executed NEB Agreements in place with CMP submitted bids in Block 1 at price levels well in excess of the compensation the project would receive in the NEB. As noted in the DG Procurement Order, the Block 1 Procurement would have resulted in prices in excess of 19 cents per kilowatt-hour for both the C/I and Shared DG programs. This clearing price is significantly above the current range of compensation for NEB projects that are in the range of 12.0 – 14.5 cents per kilowatt-hour. This strongly indicates that the Block 1 bidding did not result in cost-based prices and that there was non-competitive behavior by the participating bidders.

In addition, the Commission notes that significant numbers of solar and other renewable projects in Maine have recently been awarded contracts pursuant to other legislatively-established programs at even significantly lower prices than the NEB program. Most recently, in September of this year, the Commission completed a procurement process for energy from Maine Class IA RPS-eligible projects in accordance with 35-A M.R.S. §§ 3210-G. The projects that received awards in this process included 14 solar facilities to be developed in Maine ranging in size from 16 MW to 100 MW. The accepted first year prices for energy from the new Class IA projects that received awards range from 2.975 cents per kWh to 4.0 cents per kWh, reflecting a weighted average price of just under 3.5 cents per kWh. In addition, the Commission previously approved a long-term contract pursuant to Title 35-A, M.R.S §3210-C with Dirigo Solar to procure solar energy from a set of projects ranging from 4.99 MW to 20 MW for a price of 3.4 cents per kilowatt-hour, escalated at 2.5% annually.[9] While these projects are not directly comparable due to the DG program due to size and programmatic requirements, it is worth noting that the prices that would have resulted from the DG procurement, which were in excess of 19 cents per kWh, would have been more than five times greater than the prices for these similar solar Class IA projects.

C. Effect of Block 1 Prices on Subsequent Blocks

As described earlier, the pricing for Blocks 2 through 5 will be priced at 97% of each preceding Block. Accordingly, under this pricing structure, any increase in prices that results from non-competitive behavior in Block 1 will flow through all subsequent rounds of the procurement. In addition, bidders that chose not to or were unable to participate in the first procurement round would have certainty that their projects would receive a 20-year contract at prices that would be only slightly below the Block 1 clearing prices. In the case of the clearing prices that would have been established had the Block 1 results been approved, bidders receiving contracts in later rounds would be guaranteed to receive prices that exceeded an 18 cents per kWh. Given the clearing prices that would be set for Block 1 if the results of this non-competitive procurement had been accepted, the Commission estimated that, at the conclusion of Procurement Block 5, the net cost of the DG program to Maine ratepayers would be in excess of $70 million per year.

[9] *Maine Public Utilities Commission, Long-term Contracting*, Docket No. 2015-00026, Order Approving Agreement (Dec. 18, 2017).

## V. RECOMMENDED CONSIDERATIONS FOR MODIFICATIONS TO THE PROCUREMENT PROCESS

### A. Uniform Clearing Price Structure

As noted above, the Act requires that the price paid to all selected projects be set equal to the highest accepted bid price, referred to as the uniform clearing price. Consistent with well-established economic theory, a bid price should reflect the expected costs of the project. It is the Commission's understanding that the uniform clearing price auction structure adopted by the Legislature was based on an expectation that the structure would result in projects submitting bid prices that were reflective of their actual costs. However, as noted above, this premise was unsupported by the observed prices in the Block 1 auction. In addition, the ratepayer cost consequences of uncompetitive pricing accepted in Block 1 would continue to flow through the subsequent blocks of procurements.

Recommendation #1 -- Given that the uniform clearing price structure of the DG procurement appears not to have produced cost-based pricing as desired, the Legislature may wish to consider other structures and approaches. These include:

- Structuring the procurement as a "sealed bid, pay as bid" process in which each bidder would submit its bid, bids would be evaluated based on the submitted bids, and each project that received an award would be compensated based on its bid price. (This is similar to the structure used for the Class IA RPS resource procurement process described above as well as for the procurement of Standard Offer Service in Maine.)
- If a uniform price for a procurement block is desired, structuring the auction as a dynamic and transparent "reverse" auction with a "descending clock" feature[10];
- Removing any automatic price linkages between, or pre-established prices for, procurement rounds so that (1) bidders are required to vigorously compete in each round and (2) any disincentive for bidders to behave competitively are minimized.

### B. Barriers to Entry

Challenges related to meeting the minimum qualification requirements outlined in Table 1 above and as set forth Section 3484(4) of the Act likely contributed to the significant attrition in the number of bidders and projects. Meeting these minimum requirements presented barriers to entry for prospective projects. Although the Commission recognizes the importance of these requirements to ensure that projects are feasible, properly permitted and likely to proceed to commercial operation, certain modifications to the statutory requirements may serve to lower the barriers to entry without sacrificing the policy objective of ensuring that bidding projects are

[10] In a dynamic reverse auction with a descending clock feature, the auction price is progressively lowered until the target quantity for the auction is met. Such structures are used in wholesale electricity markets, procurements in other states, and by the FCC. (See https://www.iso-ne.com/static-assets/documents/2015/11/20151202_fca_clearing.pdf; http://blogs.reuters.com/environment/2010/12/16/california-approves-reverse-auction-renewable-energy-market/ ; and https://www.cnet.com/news/fcc-proposes-rules-for-20-billion-rural-broadband-fund-auction/) .

viable. Specifically, the Legislature may want to consider modifications to two of the statutory requirements:

Recommendation #2 -- The Legislature may wish to consider easing the requirement that all federal, state and local approvals and non-ministerial permits be *obtained* prior to bidding and replace it with a requirement that the project developer has *submitted complete applications* for all federal, state and local approvals. The preparation and submission of applications for siting and environmental permits involves a significant investment of time and expense by a developer and its contractors. It is unlikely that a developer would make this investment in a project unless that project were reasonably expected to be viable. This approach also keeps the qualification process within the control of the developers and not subject to processes (and delays due to the pandemic) that are outside of developer control.

Recommendation #3 -- The Legislature may wish to consider further clarifications to the interconnection requirements. Currently, the statute requires a project to have a "fully executed interconnection service agreement" as well as all federal, state and local approvals. In its review of project qualification applications, the Commission required demonstration that a project had a fully-executed, non-conditional, interconnection service agreement as well as section I.3.9 approval from the ISO-NE Reliability Committee, which meets monthly. As noted in the Commission's August 28th Order, completing the ISO-NE I.3.9 process proved to be a barrier for several projects. The Legislature may want to consider modifications to the interconnection requirement to clarify that a project must have a fully executed interconnection service agreement for which all conditions and system impact studies have been completed, except for those conditions and studies associated with any required I.3.9 approval.

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2020-00014

August 28, 2020

PUBLIC UTILITIES COMMISSION
Competitive Procurement for the Output of Distributed Generation (P.L. 2019, ch. 478, Part B)

ORDER

BARTLETT, Chairman; WILLIAMSON and DAVIS, Commissioners

## I. SUMMARY

Through this Order, the Commission determines that the initial procurement for distributed generation was not competitive pursuant to the standards set forth in the governing statute, rule and procurement announcement. The Commission will conduct a new initial competitive procurement within nine months and, further, shall study the reasons the procurement was not competitive and submit its findings and any recommended legislation to the Legislature.

## II. STATUTORY AUTHORITY AND PROCEDURAL BACKGROUND

During its 2019 session, the Legislature enacted an Act To Promote Solar Energy Projects and Distributed Generation Resources in Maine, P.L. 2019, Chapter 478 (Act). Part B of the Act created a distributed generation (DG) procurement process that requires the Commission to solicit long-term contract proposals for targeted amounts of energy, capacity and renewable energy credits (RECs) from developers of renewable distributed generation facilities of less than 5 MWs.

On December 11, 2019, the Commission issued an Order adopting a new rule, Chapter 312, to govern the procurement process for the output of distributed generation resources in the State.[1] Chapter 312 set forth the process that would be used by the Commission for the competitive solicitation for distributed generation resources as required by the statute.

The Act provided that for the first round of procurement, the Commission would procure 25 MW of a total 125 MW of the output for commercial or institutional distributed generation (C/I DG) projects and 50 MW of a 250 total MW for shared distributed generation (Shared DG) projects.[2] The Commission engaged the services of Enel X to administer the procurement in partnership with the Commission. On February 5, 2020,

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[1] *Maine Public Utilities Commission, Adoption of Distributed Generation Procurement Rules – Chapter 312*, Docket No. 2019-00219, Order Adopting Rule and Statement of Factual and Policy Basis (Me. P.U.C. Dec. 11, 2019).
[2] 35-A M.R.S. §§ 3485(1), 3486(1).

Commission Staff and Enel X held a Bidder Information Session to review the process for bidding in Round 1, including the timeframe for various steps in the process, the criteria that would be used for bidder qualification and individual project qualification, and an explanation of the selection criteria.

On February 28, 2020, the Commission issued the Procurement Announcement for Block 1, which included an extensive explanation of the procurement process, the qualification requirements, and the evaluation and selection criteria, among other relevant information. On March 4, 2020, Enel X conducted a webinar for bidders to demonstrate the way that the Procurement Platform would operate during the procurement process.[3] During the pendency of the procurement, bidders submitted 108 questions that were answered in five iterations of a Question and Answer Log that was available through Enel X's platform as well as the page on the Commission's website that was dedicated to the procurement.[4] Several of the questions submitted by bidders related to the time constraints they were under due to the Act's requirements for project qualification and the submission of bids, and challenges and delays resulting from the impact of COVID-19, which was starting to be felt in March, 2020. These questions include:

> Q13: If a developer is uncertain they will have projects ready by the end of the project qualification period, will there be another opportunity to register ahead of Block 2 participation? Will registration for Block 1 carry over to subsequent Blocks?
>
> Q25: What is the Commission's plan with respect to opening of Block 2 and subsequent blocks?
>
> Q32: If by the time the project qualification window opens, a bidder has certainty that its projects will be in the utility queue, with feasibility studies and system impact studies underway – said bidder would be able to show proof of progress. Under such circumstances, bidders may obtain interconnection agreements by April 17th, but could be a few days behind. In the event a bidder is late in obtaining interconnection agreements, will submitting the fully executed Interconnection Agreement during the project qualification remediation window be acceptable?
>
> Q37: Is the Maine PUC and/or Enel X considering delaying the timeline of Block 1 Procurement given the effects of the rapidly escalating coronavirus outbreak? As new restrictions accumulate, it seems certain that Bidders will all face massive disruptions securing the minimum project requirements prior to the Project Application submission deadline of April 17, 2020.

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[3] The Enel X Procurement Platform is the mechanism by which communications, bidder qualification documents, and bids were received and stored in a central location.
[4] https://www.maine.gov/mpuc/electricity/rfps/dg-procurement/index.shtml.

Q51: If the effects of COVID-19 push out the Block 1 bid submission window, will Enel X consider extending Bidder/Project Qualification windows to allow companies/projects the further opportunity to bid into Block 1?

Q71: The affidavits for siting attributes need notaries. How can these be notarized given the limitations due to COVID 19? Many notaries are closed. Is there any flexibility on the notary requirement?

Q87: While some of the larger municipal jurisdictions have remained open and are processing permitting applications remotely, some of the smaller municipal jurisdictions do not have the resources to conduct business as usual. This could result in a situation in which there are not as many Block 1 projects spread out evenly across a diverse mix of municipalities. Is the Commission considering any type of delay in rolling out Block 1 or providing extensions to discretionary permit requirements to even out the playing field?

Q95: We have a municipality who has told us they are 100% shut down and are not considering any site plan review applications. We have made several requests that the town planning board consider our application virtually, but our appeals have been unsuccessful thus far. We have no reason to think that the situation will change before the June 11 deadline. The application was marked as complete on February 20 and, prior to the emergence of COVID-19, was scheduled to go before the planning board with ample time to meet DG procurement Block 1 project qualification deadline. Since we have done everything within our power to secure a timely approval from the town and the situation is now completely out of our control, can MPUC grant a deadline waiver to our project, or consider extending the deadline for non-ministerial permits?

Enel X received applications from 34 individual bidders during the first phase of Block 1. After going through the bidder qualification process, 31 bidders received notices that they were qualified to submit project applications. Of those, 14 bidders submitted applications for qualification of 66 projects.

During the bid offer phase, six bidders submitted proposals for 18 projects in the shared distributed generation sector. In the commercial or institutional sector, three bidders submitted applications for four projects. This total number of bidders that submitted bids in both sectors combined reflected a reduction of nearly 80% as compared to the number that submitted bidder applications. The bids that were submitted represented a 67% reduction from the number of initial project applications from qualified bidders that had been received.

The bid offer rates submitted for the shared distributed generation projects would result in a clearing price of 19.49 cents per kilowatt-hour. The bid offer rates submitted for commercial or institutional projects would result in a clearing price of 19.20 cents per kilowatt-hour. For both sectors, the clearing price would establish the price to be paid for all projects for a 20-year contract period.

## III. COMPETITIVENESS STANDARDS

Section 3484(1)(B) of the Act sets forth the process the Commission must follow in conducting the initial competitive procurement:

> The commission shall accept bids for 30 calendar days beginning on or before July 1, 2020 and review bids based on the requirements under subsection 4, 5 and 6. The commission may select qualified bids in excess of the first block if the commission determines that the incremental procurement is in the public interest. If the commission selects qualified bids in excess of the first block, the commission shall reduce the quantity procured in subsequent block procurements. If the commission selects bids totaling less than the first block in the initial competitive procurement, the quantity procured in subsequent block procurements must increase by the difference between the first block and the number of megawatts submitted in the initial competitive procurement. If pursuant to subsections 4 and 5 no bids are accepted, the commission shall:
>
> (1) Conduct a new initial competitive procurement under this subsection within 9 months; and
>
> (2) Study the reasons for the inability of the procurement to secure the target amount and submit a report of its findings and any recommended legislation to the joint standing committee of the Legislature having jurisdiction over energy matters.

Section 3484(5) of the statute sets forth requirements with respect to ensuring that the procurement for distributed generation was competitive:

> **Ensuring competition.** Prior to each solicitation under subsections 1 to 3, the commission shall establish standards to ensure that the solicitation has a sufficient number of unique bidders and quantity of qualified bids to be determined competitive. If the commission concludes that a solicitation is not competitive, the commission may reduce the target procurement quantities to produce the greatest quantity that may be procured consistent with this subsection and shall defer to subsequent solicitations the capacity reduced in the solicitation.

The statute required the Commission to promulgate rules to implement the procurement of distributed generation. 35-A M.R.S. § 3488. Section 7(H) of Chapter 312 established the process for ensuring competition:

> In the procurement announcement for each procurement round, the Commission shall set forth standards by which it will evaluate whether the solicitation is sufficiently competitive. If the Commission concludes

> that a solicitation is not sufficiently competitive, the Commission may procure an amount that is less than the procurement target, including not procuring any amounts in the round. To the extent the amount procured is less than the target for a given round, the difference shall be procured in subsequent procurement rounds.
>
> If an insufficient number of unique bidders or projects is qualified for a procurement round, as determined by the Commission, the Commission may delay or cancel the procurement.

In accordance with the statute and rule, section 10 of the Procurement Announcement set forth criteria that the Commission will employ in determining whether the initial procurement round met the competitiveness standard:

> As soon as practicable after the Bid Offer Rate submission window closes on July 30, 2020, the Commission will evaluate whether this Procurement Round 1 is sufficiently competitive. In evaluating the competitiveness of the procurement, the Commission will consider factors including, but not limited to, the following matters:
>
> 1. The number of unique bidders and projects that were qualified in this procurement round;
> 2. The number of unique bidders, projects and total MW of capacity that actually submitted a Bid Offer Rate;
> 3. The number and characteristics of Bidders who submitted a Bidder Qualification Application but did not receive a notice to proceed to the Project Qualification phase and the reasons why;
> 4. The number and characteristics of Projects who submitted a Project Qualification Application but did not receive a notice to proceed to submit a Bid Offer Rate and the reasons why;
> 5. The pattern and level of Bid Offer Rate submissions throughout the time period the Bid Offer Rate Submission Window is open;
> 6. The status of the interconnection queue for the T&D utilities;
> 7. The status and other information with regard to Maine Department of Environmental Protection or other agency permitting processes;
> 8. Other factors that the Commission Staff or Enel X deems relevant to the Commission's consideration of competitiveness of the procurement.
>
> The Commission shall evaluate the competitiveness of the procurement round overall by Resource Sector. If the Commission concludes that the procurement is not sufficiently competitive overall or by sector, the Commission may procure an

amount that is less than the procurement target or by sector, including not procuring any amounts overall or in either sector.

Section 11.3 of the Procurement Announcement also provided that "If the Commission concludes that a solicitation is not competitive, as described in Section 10, the Commission may reduce the target procurement quantity to produce the greatest quantity that may be procured in a competitive manner, up to and including selecting no bids."

## IV. DECISION

As discussed above, the Act directed the Commission to establish rules and processes to procure distributed generation resources following the procurement methods specified in sections 3484 through 3486. The statute further provided, however, that if the Commission determines that the procurement, including the initial procurement block, was not competitive, the Commission has the authority to accept no bids, study the reasons for the non-competitiveness, report its findings and any recommended legislation to the Legislature, and conduct a new procurement within nine months

The Commission concludes that the initial round of procurement for distributed generation was not sufficiently competitive to warrant an award of contracts. The rationale for this decision is described below.

1. Attrition; Ultimate Numbers of Bidders and Projects

The level of attrition that occurred during each stage of the procurement – from initial qualification through to the submission of bid offer rates – is a significant factor in determining whether the solicitation was sufficiently competitive as required by the Act. Although it is impossible to know with certainty what caused the drop off in the number of projects submitted for qualification, and then later submitted in the bid offer phase of the procurement, contributing factors likely include the challenges in meeting the minimum requirements set forth in section 3484(4) of the statute:

1. Demonstration of site control;
2. A fully executed interconnection service agreement;
3. Demonstration that all required federal, state and local approvals and nonministerial permits have been obtained;
4. The capacity to make a financial assurance deposit at the time of contract execution; and
5. Depending on project sector:
    a. For a C/I project, if a participating C/I customer is not the bidder, an agreement from a C/I customer that would receive bill credits

b. For a shared distributed generation project, demonstration of experience fulfilling the obligation to subscribers.[5]

These statutory requirements are substantial and create a significant barrier for the submission of qualifying bids. The Act also contains a very ambitious timeframe, requiring the Commission to complete rule-making and Block 1 qualification prior to the opening of the 30-day Bid Offer Rate window on July 1 and issue awards by August 30, 2020.

The Commission received several comments from prospective bidders that requirements in the Act are appropriate to ensure that the projects are feasible, properly permitted and likely to proceed to commercial operation. Nevertheless, as manifested in the questions submitted by bidders through the question and answer queue, the statutory requirements were difficult to meet on such a tight timeframe, particularly when the effects of COVID-19 started to emerge. The added difficulties of developing projects during a global pandemic were certainly not anticipated by the Legislature when it developed the timeframes in the Act. In fact, Enel X reported that many bidders voluntarily withdrew their projects due to failure to obtain the necessary permits and interconnection agreements and approvals by the Block 1 deadlines.

Of particular note are issues relating to interconnection. One of the statutory qualification requirements for participating in this procurement is that the project have a fully executed interconnection agreement (IA). CMP and Versant Interconnection Queue Reports[6] demonstrated that a large number of projects had submitted applications for an IA, while only a relatively small number had a fully executed IA in place by the procurement deadline of June 17, 2020. Specifically, in CMP's service territory, the Queue Report indicates that, of the 280 projects in the Queue, only 122 had a fully executed IA by the deadline. In Versant's service territory, of the 120 to130 projects in the queue, only 12 had a fully executed IA by the deadline. In the aggregate, then, across the service territories, only about a third of the projects in the collective queues had reached the fully executed IA stage.

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[5] 35-A M.R.S. § 3484(4).

[6] CMP's interconnection queue is accessible through its website at: https://www.cmpco.com/wps/portal/cmp/networksfooter/suppliersandpartners/servicesandresources/interconnection/!ut/p/z0/fY7BCsIwEES_xUOPstFWqcciWhEjeFDaXEqIaY3WTZqkxc83PQki3maHnXkDDApgyAfVcK808jbcJVtW8YxudsmaHFOarMgpiQ_nPL-Q7SKGPbD_D6FhbumaNsAM97epwlpD4aQdlJCO49VKp3sbNBQKvbRCI0ox8sesuncdy4AF18uXh0I8DW9s9VkZkVrrkIuI641plbRjq-HWY5DB_YGKyDfKPFiZumzyBkc75O8!/?current=true&urile=wcm%3Apath%3A%2FCMPAGR_Navigation%2FFooter%2FSuppliersandPartners%2FServicesAndResources%2FInterconnection%2F.

Versant's interconnection queue is accessible at: https://www.versantpower.com/media/53129/Interconnection_request_queue.pdf.

In addition, the ISO-NE i.3.9 process proved to be a barrier for several projects. More than ten projects were voluntarily withdrawn and one project was disqualified specifically due to the failure to obtain this necessary approval to allow for interconnection.

In short, it cannot be known or measured with certainty to what extent Block 1 was impacted by constraints due to the short time frame already contemplated in the statute to complete a rigorous qualification process. Nor can it be known or measured to what extent the difficulty in meeting these requirements was exacerbated by COVID-19. Nevertheless, the attrition in the number of unique bidders and the number of projects that ultimately submitted a bid in Block 1, as well as the types of bidder questions, requests, and expressed concerns, strongly indicate the presence of substantial factors limiting participation in the initial procurement.

2. Bid Prices; Clearing Price

Another indication of non-competitiveness is the observed bid prices, as well as the ultimate clearing price. Accepting the results of the Block 1 Procurement would result in prices in excess of 19 cents per kilowatt hour for both the C/I and Shared DG sectors. This clearing price is in stark contrast with the 12.0 to 14.5 cent range of compensation for most Net Energy Billing (NEB) projects currently under development in Maine, or for which developers have indicated an intent to participate in NEB, pursuant to the kWh Credit and Tariff Rate programs governed by 35-A M.R.S. §§ 3209-A, 3209-B and Chapter 313 of the Commission's Rules.

One indicator of a sufficiently competitive bidding process is that bids are reflective of the bidders' actual costs. Indeed, it is the Commission's understanding that providing bidders with the incentive to bid at their actual costs was a reason the clearing price auction structure was favored by the Legislature, and ultimately required by the Act. The fact that projects that are similar in size and technology, and would face similar (although not identical) programmatic requirements in the NEB and DG programs, would submit bids in the DG Procurement at prices that are well in excess of the compensation they would receive in the NEB programs is a troubling indication that the bidding was not reflective of a sufficiently competitive process. Indeed, several of the ***very same projects*** that have executed NEB Agreements already in place with CMP also submitted bids in the Block 1 Procurement at bid price levels well in excess of the compensation the project would receive in the NEB programs. [7]

[7] On May 20, 2020, CMP provided notice that the cumulative capacity of the generating facilities for which CMP has executed NEB arrangements under Chapter 313 of the Commission's Rules is approximately 10.1% of CMP's annual peak demand as required by Section A of the Act. In response to this filing, the Commission opened an *Inquiry Regarding Net Energy Billing Evaluation*, Docket No. 2020-00199. In addition, according to CMP's report, some of these projects have indicated an intent to participate in the NEB kWh Program, which raises a separate concern about the validity of the project's

Stated another way, if a developer is willing to develop a project for the compensation provided by the NEB programs, it suggests non-competitiveness if, in this Block 1 Procurement process, the same developers would submit bids for the very same projects at levels that are substantially higher. While price alone is not determinative of competitiveness, such a large price difference in combination with few bidders and high levels of market concentration raises questions about rent seeking behavior and the impact of limited competition.

Finally, the Commission notes that acceptance of an excessively high price as the Block 1 clearing price would drive the results of the remaining procurement Blocks and result in significant costs to ratepayers. As required by the Act, the initial clearing prices (*i.e.,* the Block 1 clearing prices in the C/I and Shared DG sectors) form the basis for the prices for the remaining procurement blocks. Specifically, if the Commission were to award contracts for projects from this Block 1 Procurement, it must commence Block 2 "immediately." 35-A M.R.S. § 3484(2)(C). The price for Block 2 must equal 97% of the clearing price in Block 1, with each successive round having a block contract rate of 97% of the preceding block. 35-A M.R.S. § 3484(2)(B). The prices for each of the five Blocks would be locked in for projects totaling 375 MWs for contract terms of 20 years. Given the clearing prices that would be set for Block 1 if the results of this non-competitive Procurement were to be accepted, the Commission estimates that, at the conclusion of Procurement Block 5, the net cost of the DG program to Maine ratepayers would be in excess of $70 million per year.

The Commission has the express authority to administer a regulatory system that ensures "safe, reasonable and adequate" utility service and further, "to assist in minimizing the cost of energy available to the State's consumers and to ensure that the rates of public utilities subject to rate regulation are just and reasonable to customers and public utilities." 35-A M.R.S. § 101. The Commission also has "all implied and inherent powers under this Title, which are necessary and proper to execute faithfully its express powers and functions specified in this Title." 35-A M.R.S. § 104.

The Legislature has made clear its commitment to encourage the development of distributed generation resources. The Commission understands this decision will be met with disappointment and is cognizant of the significant time and expense that the bidders and Commission Staff put into this procurement. Nevertheless, the Legislature explicitly directed the Commission to determine the competitiveness of the initial procurement and the Commission cannot ignore that responsibility or make a finding that is at odds with the facts before it.

The determination that this procurement is not competitive is both consistent with the Act as well as with the Commission's over-arching statutory public interest obligation to minimize the cost of energy for electricity customers in Maine. In making this decision, the Commission adheres to the steps contemplated by the Legislation,

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Interconnection Agreement, given that projects participating in the NEB kWh Program may face less stringent study processes and interconnection requirements than those required for projects participating in the DG programs.

including the study and report examining the reasons for the non-competitiveness of the procurement process, the provision of recommended legislation, and the conduct of "new initial competitive procurement" within nine months as contemplated by the Act.

Accordingly, the Commission

O R D E R S

1. The initial procurement, Block 1, for both the Shared Distributed Generation and Commercial or Institutional Distributed Generation programs, is found to not be adequately competitive and thus no contracts are awarded for distributed generation projects;

2. The Commission shall conduct a new initial competitive procurement under this subsection within 9 months; and

3. The Commission shall study the reasons for the inability of the procurement to be adequately competitive and will report its findings to the Legislature.

Dated at Hallowell, Maine, this 28th day of August, 2020.

*/s/ Harry Lanphear*

Harry Lanphear
Administrative Director

COMMISSIONERS VOTING FOR: Bartlett
Williamson*
Davis

**See separate concurring opinion.*

## 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).

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.

**Concurring Opinion of Commissioner Dr. R Bruce Williamson**

I concur with the Commission's analysis and the conclusion that the Distributed Generation (DG) solicitation cannot be found to be "competitive" as specified in the Act. Through this concurrence, I present some concepts to stimulate thinking on how to improve competitiveness of future solicitations.

In the current solicitation, a few “strong bidders” who were more familiar with the legislation and early prepared were able to qualify projects for the first auction, while many other bidders who began the process late would wind up in later rounds. These strong bidders turned in bids barely two cents per kWh apart, and in so doing, set the price for four subsequent solicitations for all other bidders. If we were to accept this non-competitive result, ratepayers in the service territories of Central Maine Power Company and Versant Power would shoulder the burden of significant rate increases to pay for the projects of more than $70 million dollars a year for 20 years. This is during a time when perhaps one-fifth of Maine ratepayers will be on payment plans to try to pay off large past due amounts remaining from the COVID bill moratorium and earlier billing issues.

The peculiar tightly packed bids are the consequence of rational behavior by the bidders to the highly flawed structure of the auction design contained in the Act. Should this auction design as spelled out in statute ever be used again, it will produce the same expensive, non-competitive outcome. By design in statute, no bidder would be significantly worse off by riding on the coattails of those early movers who set a very high price that would apply to future rounds. Those bidders who chose not to or were unable to meet the prerequisites to bid the first round have the comfort of knowing that their projects will receive a 20-year contract price that averages 18.4 cents per kWh for the shared DG program and 18.1 cents per kWh for the C/I Program. It’s a win-win for all developers, and not so for ratepayers.

As an economist with some experience in auction design in corporate and government work, this should have been a reverse auction – where the lowest priced best qualified bids are awarded contracts.[1] Google just acquired 1.2 GW of renewable power in 60 minutes of bidding using reverse auctions and achieved a 17% and a 23% price decrease from the lowest initial bids received.[2] We should take a lesson from that to achieve important environmental policy goals with electricity at prices that do not hurt ratepayers for the next two decades. When we speak of competition in auctions, it is only partly correct to assume it means the same thing as competitive markets. The number of bidders in and of itself does not guarantee a competitive auction, assuming

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[1] The Commission’s standard offer electricity auctions for CMP and Versant territories, which are sealed-bid reverse auctions, have produced electricity supply prices as the default service in Maine for many years at a very competitive price level of about 6.5 to 8.5 cents per kWh.

[2] https://pv-magazine-usa.com/2019/11/01/googles-reverse-auctions-net-1-2-gw-of-renewables-in-60-minutes/

there's more than one bidder. The number of bidders is simply more reassuring, if only because it helps the buyer (here, the State of Maine) have a better sense of what the market supply cost of the desired item is. Unless there is a ready benchmark for competitive market supply prices, sellers often have an initial information advantage in an auction. With more sellers bidding, particularly in competitively designed auctions, the buyer hopes to offset that information asymmetry by using the actual bid prices as a reasonable proxy for a supply cost benchmark.

In fact, we already have good benchmarks for the cost of electricity supplied by similarly sized solar developments in bid procurements. This present DG auction price of over 19 cents per kWh is over 5 times as high as an already executed solar contract for a comparable project well underway from a previous Commission auction pursuant to section 3210-C.[3] Moreover, these new DG bids are more than 30% higher than the above market, subsidized compensation provided by the net energy billing kWh program. In short, the Commission does have benchmarks to judge competitiveness for quite similar projects comparable to the proposed DG bids.

I conclude by emphasizing that simply saying we need more qualified bidders in this round is not a fix to this auction design; it may only increase, not decrease the bid price with this design. Fundamentally, if the State wants to accomplish policy goals of electrification and low or no carbon generation, it can do so at much lower cost by repealing the auction design in the statute and starting over with a reverse auction to procure least cost, technically acceptable DG resources without unnecessarily harming the State's struggling ratepayers. The economic principles I have mentioned demonstrate that this procurement for distributed generation was not competitive by the standards set forth in the governing statute and Commission rule and procurement announcement. I am convinced that repeating this auction design will predictably produce an uncompetitive outcome. However, and as my colleagues have also mentioned, the Commission is required by current statute to commence a new initial competitive procurement within nine months and in the meantime study the reasons the procurement was not competitive and submit its findings and any recommended legislation to the Legislature.

[3] The Commission recently approved a long-term contract pursuant to section 3210-C with Dirigo Solar to procure solar energy from a set of projects ranging from 4.99 MW to 20 MW in size. The price for the output of these projects is 3.4 cents per kilowatt hour in Year 1 of the contract and escalated thereafter at 2.5% annually. *Maine Public Utilities Commission, Long-term Contracting*, Docket No. 2015-00026, Order Approving Agreement (Dec. 18, 2017).