

MAINE PUBLIC UTILITIES COMMISSION
Request for Proposals for Community-
Based Renewable Energy Projects

October 14, 2011

ORDER APPROVING LONG-
TERM CONTRACTS

WELCH, Chairman; VAFIADES and LITTELL, Commissioners

I. SUMMARY

Pursuant to 35-A M.R.S.A. § 3604, we direct Bangor Hydro Electric Company (BHE) to enter into long-term contracts for energy with three Community-Based Renewable Energy Projects: Jonesport Wind, LLC, a 4.8 MW wind facility to be constructed in Jonesport, Maine; Lubec Wind, LLC, a 4.8 MW wind facility to be constructed in Lubec, Maine; and Pisgah Mountain, LLC, a 9 MW wind facility to be constructed in Clifton, Maine.

II. BACKGROUND

During the 2009 session, the Legislature enacted An Act To Establish the Community-based Renewable Energy Pilot Program (Act), P.L. 2009, ch. 329. Part A of the Act establishes a community-based renewable energy pilot program, to be administered by the Commission, to encourage the sustainable development of community-based renewable energy. The Act provides incentives, on a pilot program basis, for the development of community-based renewable projects that qualify for participation in the program. The projects must generate electricity from an eligible renewable resource, which includes fuel cells; tidal power; solar, wind and geothermal installations; hydroelectric generators; generators fueled by landfill gas; and biomass generators whose fuel includes anaerobic digestion of agricultural products, byproducts or wastes. These projects must be "locally owned electricity generating facilities," which means that 51% or more of the facility must be owned by "qualifying local owners." An individual project must not exceed 10 MW and the total installed generating capacity of all program participants in the pilot program combined may not exceed 50 MW. The pilot program is repealed on December 31, 2015. 35-A M.R.S.A. §§ 3601-3609.

The incentive mechanisms provided by the Act are either: 1) a long-term contract for the output of the facility with a transmission and distribution (T&D) utility; or 2) a renewable energy credit (REC) multiplier in which the value of the REC is 150% of the amount of the produced electricity. Projects electing the REC multiplier are responsible for negotiating their own transactions for energy, capacity or RECs. Certified projects of less than 1 MW that elect a long-term contract can complete a standard form contract with the T&D utility at a price per kWh that has been established by the Commission. For certified projects with generating capacity of 1 MW and larger, the Act provides that

the Commission shall periodically conduct a competitive solicitation to select projects that will be awarded a long-term contract with the T&D utility.

On January 27, 2010, the Commission adopted a rule implementing the community-based renewable energy pilot program. *Maine Public Utilities Commission Community-Based Renewable Energy Pilot Program (Chapter 325)*, Docket No. 2009-363, Order Adopting Rule and Statement of Factual and Policy Basis (January 27, 2010). On March 8, 2011, the Commission approved the standard form contract for the Community-Based Renewable Energy Pilot Program. *Order Approving Community-Based Renewable Pilot Program Standard Contract*, Docket No. 2010-118 (March 8, 2011). On April 28, 2011, the Commission issued a Request for Proposals for Community -Based Renewable Energy Projects. The RFP required the bidders to include:

- Project description
- the proposed pricing terms;
- indicative customer prices on a cents per-kilowatt-hour basis, not to exceed 10 cents per kilowatt;
- full project cost disclosure;
- expected revenue sources in addition to the long-term contract;
- Commission order certifying the project as a community-based renewable energy project pursuant to Section 4 of Chapter 325 (if certified) or petition for certification.

Bids were due on May 31, 2011 and were received from the following three bidders:

- Jonesport Wind (“Jonesport”), a 4.8 MW wind project¹;
- Lubec Wind (“Lubec”), a 4.8 MW wind project²; and
- Pisgah Mountain, LLC (“Pisgah”), a 9.0 MW wind project³.

Staff discussed pricing and structuring terms with the bidders throughout the summer and bidders were asked to submit a best and final pricing offer. It is those best and final offers we consider here.

¹ See *Jonesport Wind Power, LLC*, Docket No. 2011-50, Request for Certification of a Community-Based Renewable Energy Project, Order Approving Certification (March 1, 2011).

² See *Kean Energy, LLC, Lubec Wind Power, LLC*, Docket No. 2011-178, Request for Certification of a Community-Based Renewable Energy Project, Order Approving Certification (March 22, 2011).

³ See *Pisgah Mountain, LLC*, Docket No. 2011-154, Request for Certification of a Community-Based Renewable Energy Project, Order Approving Certification (September 14, 2011).

III. DISCUSSION AND DECISION

At the outset, we note that the Legislature, in establishing the Community-Based Renewable Energy Pilot Program, has indicated the objective of encouraging the sustainable development of community-based renewable energy projects up to the 50 MW overall capacity limit statewide by the time the pilot program ends on December 31, 2015. In response to the Request for Proposals, the Commission received proposals from bidders for projects totaling 18.6 MW in installed capacity. When these proposed wind projects are combined with the two other community-based projects that are already program participants, the total capacity of all pilot program participants is slightly over 24 MW⁴. Our role in administering the pilot program is to ensure that the projects meet the standards for program participation established by the Legislature and, to ensure that in any contract entered into: 1) the average price per kilowatt-hour does not exceed 10 cents, and 2) the cost of the contract does not exceed the cost of the project plus a reasonable rate of return on investment as determined by the Commission.

All three of the projects have submitted bids that comply with the requirement that the price per kilowatt-hour may not exceed 10 cents. Lubec and Jonesport bid a fixed price for a 20-year term of 8.5 cents per kilowatt-hour. Pisgah bid a fixed price for a 20-year term of 9.3 cents per kilowatt-hour. In addition, each of the bidders submitted complete project financial information and return calculations that were analyzed by Staff. The indicated rates of return are within a range that is reasonable for stand-alone project developments and indicate that the developers are not receiving a “windfall” return from the projects.

We are sensitive to the potential burden that these contracts may place on BHE ratepayers.⁵ The proposed contract prices are above current wholesale market prices

⁴ *Exeter Agri-Energy, LLC (fka Stonyvale, Inc.)* Docket No. 2010-141, Request for Certification of a Community-Based Renewable Energy Project, Order Approving Certification (November 23, 2010) and *Fox Islands Wind, LLC*, Docket No. 2010-65, Request for Certification of a Community-Based Renewable Energy Project, Order Approving Certification (April 14, 2010).

⁵ By approving all three proposals, the total MW for the Community-Based Renewable Projects in BHE territory will exceed the total anticipated in the Commission’s rules. Chapter 325, § 3(D)(2). As indicated in those rules, however, the Commission may modify those “shares” based on program experience. Chapter 325, § 3(D). *Pisgah Mountain, LLC*, Docket No. 2011-144, Request for Reallocation of Utility Territory Specific Capacity Limits for Community-Based Renewable Energy Pilot Program, Order (October 3, 2011). In light of the paucity of proposals to this point, and the relatively modest burden imposed by the proposals we accept today, we will allow all these projects to go forward in BHE territory. While we will take into account the extent of projects now approved for BHE in any future consideration of projects proposed for BHE or other utilities’ territories, we reach no conclusion today on any “reallocation” of the shares contemplated by the rule.

for electricity and the difference between contract prices and the price at which BHE will be able to sell the electricity into the wholesale market will be borne by BHE ratepayers. We note, however, that these projects are relatively small wind projects with projected capacity factors below the capacity factors of other potential renewable energy projects such as biomass. Although the incentive rate per kilowatt-hour permitted as part of the community-based pilot program exceeds current wholesale prices, the lower capacity factor associated with wind projects serves to mitigate the overall economic impact in the BHE service territory when compared to alternative community-based renewable project development.

Accordingly, we direct BHE to enter into the following long-term contracts:

- Jonesport Wind, LLC, for energy only, for 20 years to begin at the commercial operation date of the project, at a fixed price throughout the term of 8.5 cents per kWh.
- Lubec Wind, LLC, for energy only, for 20 years to begin at the commercial operation date of the project, at a fixed price throughout the term of 8.5 cents per kWh; and
- Pisgah Mountain, LLC, for energy only, for 20 years to begin at the commercial operation date of the project, at a fixed price throughout the term of 9.3 cents per kWh.

We delegate to the Director of Electric and Gas Utility Industries the authority to approve proposed modifications to the terms and conditions of the standard form contract for the Community-Based Renewable Energy Pilot Program.

Consistent with provisions in statute and the rule, 35-A M.R.S.A. § 3604 (8) and Ch. 325, § 6, the Commission will allow BHE to recover in rates all costs of the contracts entered into, including but not limited to any effects on BHE's costs of capital.

Dated at Hallowell, Maine, this 14th day of October 2011.

BY ORDER OF THE COMMISSION

Karen Geraghty
Administrative Director

COMMISSIONERS VOTING FOR:

Welch
Littell

LIMITED DISSENT:

Vafiades

Dissent of Commissioner Vafiades in Docket 2011-150, Request for Proposal for Community-Based Renewable Energy Projects, Consideration of Bids

I respectfully dissent on the limited issue of the acceptance of the Pisgah Mountain project's bid proposal.

The overall purpose of the community-based renewable energy pilot program is to encourage sustainable development of community-based renewable energy in the State. The three project bidders have been certified as meeting the statutory requirements to qualify for the pilot program and have elected to enter into a long term contract for energy as a program incentive. The Commission initiated a competitive solicitation process for long term contracts for these community-based renewable energy projects as provided by Title 35-A Section 3604. The statute requires that the contracts may not be for more than 20 years, the annual average kWh price does not exceed 10 cents and the overall cost of the project does not exceed the project cost plus a reasonable rate of return on investment. The statute anticipates that the process will be competitive and that the Commission will negotiate with program participants regarding the contract terms including assuring that such contracts are commercially reasonable. In addition the Commission is directed to select program participants that are competitive and lowest price when compared to comparable bids. (35-A section 3604, sub 6)

All the proposals received by the Commission in May of this year were for wind projects with contract terms of 20 years and all bid prices were under 10 cents. These are small projects and the energy bids are above market rates as anticipated by the terms of the pilot project enabling legislation. The project bid price received from Pisgah Mountain was greater than the other two bidders. Based on statutory guidance and Commission discretion to engage in negotiations, I would have rejected the Pisgah bid and directed the staff to negotiate with the project for a lesser price.

I agree with my fellow Commissioners that the Commission has discretion in accepting terms for long term contracts but with the additional statutory guidance provided for this pilot program, I would have rejected the Pisgah contract bid. I respectfully dissent on this limited issue.

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.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.
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.A. § 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.A. § 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.