

February 26, 2019

MAINE PUBLIC UTILITIES COMMISSION
Procurement of Biomass Resources

ORDER

VANNOY, Chairman; WILLIAMSON and DAVIS, Commissioners

I. INTRODUCTION

Through this Order, the Commission concludes that ReEnergy Ashland LLC and ReEnergy Fort Fairfield LLC (collectively, ReEnergy) have met their obligation to provide the contract year two required in-state benefits pursuant to the Biomass Generated Energy Agreement executed on February 10, 2017 (Agreement).

Accordingly, the Commission determines that no reduction in contract payments is warranted and directs Emera Maine (Emera) to release the credit support in accordance with the provisions of the Agreement.

Further, in accordance with the Act, the Commission directs that the funds remaining in the Cost Recovery Fund be transferred to the Maine Budget Stabilization Fund established under 5 M.R.S. § 1532 as soon as practicable.

II. BACKGROUND¹

During its 2016 session, the Legislature enacted an Act to Establish a Process for the Procurement of Biomass Resources (Act). P.L. 2016, Ch. 483 (Act) directing the Commission to initiate a competitive solicitation for one or more 2-year contracts for up to 80 megawatts of biomass resources. The Act established a Cost Recovery Fund (Fund) to be used by the Commission to pay the above-market costs of any contracts and directed the State Controller to transfer \$13.4 million to the Fund. The Act also provides that no more than 50% of the fund may be awarded to facilities serving the Northern Maine Independent System Administrator (NMISA) region and allows the Commission to suspend a contract if insufficient funds are available to pay above-market costs.²

In accordance with the Act, the Commission issued a Request for Proposals

¹ For complete background see the June 27, 2018 order in this docket *Maine Public Utilities Commission, Procurement of Biomass Resources*, Docket 2016-00084, Order at 1-6. (CY1 Review and Order).

² ReEnergy's Ashland and Fort Fairfield facilities are located in the NMISA region and are, therefore, subject to the \$6.7 million limitation on above-market costs paid pursuant to the Agreement.

for the Sale of Energy from Biomass Resources (RFP) on June 17, 2016. By Orders issued in this docket dated December 19, 2016 (Part I Order) and January 25, 2017 (Part II Order), the Commission approved two contracts, one between ReEnergy and Emera and the other between Stored Solar, LLC (Stored Solar) and CMP. The two-year Biomass Generated Energy Agreement between ReEnergy and Emera was executed on February 10, 2017 with an original term of March 1, 2017 through February 28, 2019.

The Agreement requires ReEnergy to operate the facilities at 50% capacity or greater and to provide specific In-state Benefits during each year of the contract. The Agreement includes provisions to adjust the contract payments in the event ReEnergy fails to provide the required In-state Benefits³ and to suspend the contract in the event insufficient funds are available in the Cost Recovery Fund. Section 5 of the Agreement also provides that, if the Agreement is terminated as a result of insufficient funds in the Cost Recovery Fund, the Required In-state Benefits are adjusted pro-rata to reflect the adjusted contract year. ReEnergy is also required to provide financial security in the event ReEnergy fails to meet its in-state benefits requirements and the Commission orders an adjustment to the contract payments.

III. CONTRACT YEAR TWO IN-STATE BENEFITS

By letter dated December 5, 2018, ReEnergy notified Emera that the \$6.7 million Cost Recovery Fund limitation was reached on November 30, 2018. Consequently, pursuant to its terms, ReEnergy terminated the Agreement as of that date. As provided in Section 5.3 of the contract, if the Agreement is terminated prior to the expiration of the Term, the required In-State Benefits for the applicable Contract Year are pro-rated for that Contract Year. Because the Agreement was terminated as of November 30, 2018, the Required In-State Benefits for the second Contract Year are pro-rated for the 9-month duration of the second Contract Year, as shown in Figure 1.

³ The Agreement establishes an annual review process in which the Commission determines the extent to which the operational and In-State Benefit obligations are met. ReEnergy's In-State Benefits Report for contract year one was reviewed by the Commission and no adjustments to contract payments were required. CY1 Review and Order at 10.

Figure 1

| OBLIGATION | REQUIRED IN-STATE BENEFITS FOR FULL CONTRACT YEAR | PRO-RATED REQUIRED IN-STATE BENEFITS FOR SECOND CONTRACT YEAR |
|------------------------------------|--|--|
| In-Plant Full-time Equivalent Jobs | 45 jobs | 33.75 jobs |
| In-state biomass purchases | 624,117 tons | 468,088 tons |
| Capital expenditures | \$662,749 | \$497,062 |

On January 25, 2019 ReEnergy filed its contract year two in-state benefits report. In the Report, ReEnergy indicates that it provided 35.78 in-plant full-time equivalent jobs, purchased 415,828 tons of in-state biomass, and made \$704,581 in capital expenditures. ReEnergy also reported that, during the second contract year, its Facilities operated at a combined capacity of 80% when the hours the Facilities spent in forced or planned outages are excluded from the calculation and 74% when those hours are included. To support its in-state benefits, ReEnergy provided supporting documentation, including detailed tables and documents related to each benefit category.

The Commission's review of the supporting documentation and analysis of the economic value associated with Actual In-State Benefits provided by ReEnergy during the second contract year is consistent with the review and analysis undertaken for the first contract year and described in detail in the CY 1 Review and Order. The Commission accepts ReEnergy's calculation that it has provided In-State Benefits of 35.78 in-plant full-time equivalent jobs, 415,828 tons of in-state biomass purchased and \$704,581 in capital expenditures for Contract Year 2.

Also, consistent with the Commission's review of the Contract Year 1 In-State Benefits Report and with Section 5.1 of the Agreement, the "determination of Actual In-state Benefits will be made by the Commission, in its reasonable discretion, in accordance with the provisions of this Agreement, based on a reasonable weighting of the *economic value* provided by each category of In-State Benefits." (Emphasis added). As explained in the CY 1 Review and Order, the Commission retained the services of London Economics, Inc. (LEI) in analyzing and estimating the overall in-state economic benefits derived from each proposal. LEI's analysis included more detailed breakdown of the economic benefits to be provided in various sectors related to the type of economic activity. The specific commitments related to jobs, biomass purchases, and capital investments were incorporated into the ReEnergy Agreement as the measures against which its performance with respect to providing the economic benefits would be assessed by the Commission. As shown in Figure 2, the Commission has used the values from for Contract Year 2 in LEI's assessment to measure ReEnergy's overall performance and determines that ReEnergy has met its obligation to provide economic benefits.

Figure 2

| ReEnergy CY 2 | | | | | | |
|----------------------------|----------------------------|-------------------------------------|--------------------------|----------------------------------|---------------------------------|-------------------------|
| Contract Metric | Required In-State Benefits | Prorated Required In-State Benefits | Actual In-State Benefits | Percent Actual vs. Required | Economic Value per LEI Analysis | Actual Output Delivered |
| In-plant FTE jobs | 45 | 33.75 | 35.78 | 106.0% | \$ 9,752,178 | \$ 10,338,753 |
| In-state biomass purchases | 624,117 | 468,088 | 415,828 | 88.8% | \$ 4,823,916 | \$ 4,285,349 |
| Capital Expenditures | \$ 662,749 | 497,062 | \$ 704,581 | 141.7% | \$ 1,939,976 | \$ 2,749,900 |
| | | | | | \$ 16,516,070 | \$ 17,374,003 |
| | | | | | | 105.19% |
| | | | | Contract payment reduction | | 0.00% |
| | | | | Invoice | | \$ 3,890,207 |
| | | | | Adjusted Contract Payment | | \$ 3,890,207 |

Given the facts presented above regarding ReEnergy's performance in each of the contract metric categories as well as in the aggregate, the Commission finds that no reduction to the contract payments to ReEnergy is warranted. Although the Company fell somewhat short of its metric for in-state biomass purchases, it exceeded its metrics in the other two categories such that the overall economic output value actually provided by ReEnergy (as measured by the LEI analysis) was in excess of ReEnergy's obligation. Accordingly, based solely on the facts presented in the ReEnergy Report, the Commission finds that ReEnergy has provided its required in-state benefits during the second year of the Agreement.

II. CONCLUSION

For the foregoing reasons the Commission finds that, during the second contract year, ReEnergy has operated the Facilities at 50% capacity or greater and has provided all of its required in-state benefits, resulting in no reduction to the contract payments.

Accordingly, the Commission

ORDERS

1. That ReEnergy has met its obligation to provide the contract year two required in-state benefits pursuant to the Biomass Generated Energy Agreement executed on February 10, 2017 and no reduction in contract payments is warranted;
2. That Emera Maine is directed to release the credit support in accordance with the provisions of the Agreement; and,

3. That the funds remaining in the Cost Recovery Fund shall be transferred to the Maine Budget Stabilization Fund established under 5 M.R.S. § 1532 as soon as practicable.

Dated at Hallowell, Maine, this 26th day of February 2019

/s/ Harry Lanphear

Harry Lanphear
Administrative Director

COMMISSIONERS VOTING FOR: VANNOY
WILLIAMSON
DAVIS

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S. § 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 11(D) 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. 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.