STATE OF MAINE
PUBLIC UTILITIES COMMISSION

February 28, 2020

ORDER ADOPTING
STANDARD CONTRACTS
FOR THE OUTPUT OF
DISTRIBUTED GENERATION
RESOURCES

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

Docket No. 2020-00014

Docket No. 2019-00219

BARTLETT, Chairman; WILLIAMSON and DAVIS, Commissioners

Through this Order, the Director of Electric and Gas Industries adopts standard contracts to be used for the procurement of the output of distributed generation resources.

I. 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[1] of the Act created a distributed generation 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. The Act contained the following provisions:

> Prior to a solicitation, the commission shall provide, in consultation with the standard buyer or buyers, a standard contract that commits the standard buyer and a project sponsor to commercially reasonable behavior and includes provisions including an interconnection fee list and interconnection schedule to ensure that the project proceeds to commercial operation on a reasonable timeline. The standard contract for all standard buyers must be substantially identical to the extent commercially reasonable.[2]

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[1] Part A of the Act modified Maine's Net Energy Billing (NEB) program. *See Maine Public Utilities Commission Amendments to Chapter 313 – Net Energy Billing*, Docket No. 2019-00197.
[2] 35-A M.R.S. § 3484(7).

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. The Commission attached two standard contracts to the adopted rule: One contract applies to shared distributed generation projects involving subscribers; the other is for projects owned by or relating to a commercial or institutional distributed generation project. The Order noted the statutory provision requiring consultation with the standard buyers, that is, the investor-owned transmission and distribution utilities in the State, in the creation of these standard contracts. To that end, the Order directed Commission staff to convene a process to allow for consultation with the utilities "as well as other interested entities to finalize the contracts that will be included in the procurement announcement to ensure they reflect the parties' understanding of their obligations" and are compliant with the statute and Chapter 312. The Order further provided that "Commission staff will make final versions of these standard contracts available prior to the procurement announcement as an attachment to this Chapter."[3]

On December 19, 2019, several project developers and representatives of CMP and Emera Maine attended a stakeholder meeting at the Commission offices to discuss standard contracts relating to both NEB and distributed generation projects. The Hearing Examiner issued a procedural order requiring the utilities to submit redlined versions of the standard contracts by January 15, 2020. The order also directed any interested persons to file comments on the redlines by January 29, 2020.

On January 15, 2020, CMP, in consultation with Emera Maine, filed redlined versions of all of the standard contracts, including the two standard contracts for distributed generation that had been attached to the Order adopting Chapter 312. On January 29, 2020, the Commission received comments on the CMP redlines of the distributed generation standard contracts from the Maine Renewable Energy Association and Coalition for Community Solar Access (MREA/CCSA).

On February 12, 2020, Emera Maine filed comments in this docket[4] as well as the rulemaking docket relating to amendments to the rule governing Net Energy Billing,[5] in which Emera Maine stated that it had "requested feedback from impacted departments" within the utility and had "identified issues that it believes warrant further discussion with the Commission and stakeholders." On February 14, 2020, the Commission received a letter from Emera Maine's attorney raising "serious implementation issues unique to Emera Maine's Maine Public District" vis a vis its participation in the Northern Maine Independent System Administrator (NMISA) system.

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[3] *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 (Order Adopting Rule) at 8 (Me. P.U.C. Dec. 11, 2019).

[4] Emera Maine has stated throughout these proceedings that it has worked with CMP to prepare redlines and comments to the proposed standard contracts. Emera Maine offers no reason why it could not have submitted its own comments within the deadlines set by the hearing examiner.

[5] *Maine Public Utilities Commission, Amendments to Chapter 313 – Net Energy Billing*, Docket No. 2019-00197.

According to this letter, Emera Maine indicates that it met with NMISA representatives on February 14, 2020, to discuss these implementation issues. Emera Maine, through its attorneys, requests the Commission delay approval of the standard contracts that would apply in the Maine Public District of Emera Maine's service territory while it attempts to work through these issues in a new stakeholder process.

On February 18, 2020, SynerGen Solar filed comments objecting to Emera Maine's request to delay approval of the standard contracts, arguing that the statute does not allow for a delay of the procurement process for one area of the state while proceeding with all other service territories.

II. RESPONSE TO COMMENTS AND DECISION

The Director of Electric and Gas Industries, having reviewed the redlines prepared by CMP and Emera Maine as well as the redlines and comments of MREA/CCSA, as delegated by the Commission, hereby issues final versions of the standard contracts for the parties to use when entering contracts resulting from the awards that will result at the close of the procurement process. The Director also issues redlined versions of the original standard contracts that were attached to the Commission's Order of December 11, 2019, adopting Chapter 312. The redline reflects the acceptance of several of the edits proposed by CMP and Emera Maine in their January 15, 2020 redlined versions. The redlines also reflect acceptance of some of the edits proposed by MREA/CCSA.

A. Shared Distributed Generation Standard Contract

1. Preamble

The Commission does not accept the proposal by Emera Maine to convert the "Preamble" to Recitals. In drafting the standard contracts, the Commission relied on language that it has used in previous agreements relating to the procurement of energy. The Commission sees no need to deviate from the Commission's preferred use of a Preamble.

The Preamble refers to the Project Sponsor's Proposal, which is required to be submitted as Exhibit A to the contract. This serves as a complete description of the Distributed Generation Resource facility.

2. Article 1 - Definitions

The Commission accepts the suggestion that "Bill Credit" should refer more specifically to the output of the distributed generation resource and has accepted that change.

The Commission accepts the definition of "Business Day" as an addition to the Definitions.

The Commission changes the definition of "Commercial Operation Date" (COD) to specify that the Project Sponsor must give notice of such date at least 10 days prior to the actual COD, rather than the originally proposed 3-day period. The Commission rejects MREA/CCSA's suggestion of adding the word "anticipated" to this definition. The definition gives the Project Sponsor the right to give notice of the date and, therefore, it has control over what that date will be. If during the notice period there is an unexpected occurrence that would affect this date, the Project Sponsor must seek relief in the form of a withdrawal of that notice or some other action. Because the Commercial Operation Date is the trigger to start the delivery phase of the agreement, this date must be a date certain. For this reason, the Commission added language requiring the Director of Electric and Natural Gas Industries be copied on this notice.

There is some dispute as to the meaning of "Commercially Operable." The statute provides that "[a] qualified project must be commercially operable within 18 months of being awarded a contract."[6] The language in the originally proposed standard contract stated that "Commercially Operable" would mean that the project was operational and placed into service and that the project had been constructed, tested and was fully capable of operating for the purpose of generating electrical energy. The utilities proposed minor edits but left the controlling language untouched.

In their comments, MREA/CCSA state that "commercially operable" means that the facility is "mechanically complete, which is generally within the Project Sponsor's control, in contrast to actual commercial operation, which depends on interconnection construction or upgrade delays that likely are not within the Project Sponsor's control."[7] They suggest adding language such that a project may be commercially operable "if it otherwise satisfies this definition but is awaiting (i) authorization to interconnect or permission to operate from the interconnecting utility or (ii) construction or installation of interconnecting utility-owned or provided equipment."

The Commission removes the phrase "is operational and placed into service," which largely addresses MREA/CCSA's concern. The Standard Contract contains language requiring the parties to make commercially reasonable efforts to ensure that the project is not unnecessarily delayed.[8] The contract also provides the opportunity for

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[6] 35-A M.R.S. § 3484(7).

[7] *Maine Public Utilities Commission, Adoption of Distributed Generation Procurement Rules – Chapter 312*, Docket No. 2019-00219, Comments of Maine Renewable Energy Association and Coalition for Community Solar Access Regarding Standard Agreements (MREA/CCSA Comments) at 8 (Me. P.U.C. Jan. 29, 2020).

[8] Article V, section 5.1

the parties, either singly or as a joint effort, to seek relief from project milestones during the construction period of the contract.[9] To qualify as a bidder in the procurement process, the Project Sponsor must have an executed interconnection agreement. Again, reflecting the statutory language, the standard contract requires the submission of project milestones, including upgrades needed for interconnection. These deadlines must be realistic and keep in mind the statutory mandate that the project must be commercially operable within 18 months of the date the Commission announces the contract awards. The contract requires the parties to cooperate in good faith and to engage in commercially reasonable behavior to ensure the project is completed within the statutory deadline, unless the Commission has granted an extension.[10]

With respect to “Credit Rate,” the Commission adds language indicating that the dollar figure may increase from year to year, as the result of an escalator. If that is the case, the contract should attach a schedule listing the rate for the years of the contract to the extent they are known.

The Commission accepts a change to “Nameplate Capacity” to include alternating or direct current projects.

The Commission adds a definition of “Standard Buyer” to the contract. This definition specifies that the Standard Buyer for purposes of the standard contract is either one of the following: Central Maine Power, Emera Maine-Bangor Hydro District, or Emera Maine-Maine Public District. This definition should help ameliorate some of the concerns that Emera Maine has raised regarding its obligations pursuant to NMISA rules, which govern the Maine Public District portion of its service territory. As set forth in the Order adopting Chapter 312, “the facility and subscriber must both be located within the service territory of the transmission and distribution utility that is serving as standard buyer.”[11] The Project Sponsor must ensure that its subscribers to a particular resource are within the same district of Emera Maine’s service territory.

The Commission amends the definition of “Subscriber’s Percentage Interest” to allow for the calculation up to five decimal places.

The Commission accepts CMP’s addition of the definition for “Unused Credits.”

3. Article II - Conditions Precedent, Representations and Warranties

MREA/CCSA submitted comments arguing that section 2.1, as originally proposed, makes all of the obligations in the Agreement dependent on the conditions precedent, which are quite broad and “temporally incongruent, given that many of the obligations in the Agreement (to work together in good faith, become commercially

[9] Article III, section 3.1(a).
[10] Article V, sections 5.1(a) and 5.1(b).
[11] Order Adopting Rule at 4.

operable, etc.) should and will be in place prior to the Commercial Operation Date."[12] They are concerned that project lenders would view this provision as an unacceptable risk in that it would "allow[] a party to use its own failure to act or misrepresentations as grounds for terminating the agreement."

The comments correctly assume that the language in this section reflects language the Commission has used in its standard long-term contract. The comments suggest that this language does not translate well to the distributed generation procurement process "where the projects will already have satisfied many of the typical conditions precedent and milestones (e.g. nonministerial permits)."

MREA/CCSA's comments overstate the effect of the conditions precedent. The parties should be willing to affirm that their contractual obligations are supported by their representations, which are true and correct up through the Commercial Operation Date. There should similarly be no hesitation to affirm that they have received all the regulatory approvals required to pursue the project. If, in fact, a party has misrepresented the facts or does not have a necessary governmental permit, the agreement should terminate. The standard contract should not insulate a lender from the possibility that these critical conditions have not been met.

Moreover, the final paragraph of this section makes clear that a party seeking to terminate an agreement on the grounds that one of these conditions have not been met must give notice of such termination and state "in reasonable detail" the condition(s) that have not been satisfied. This provides a safeguard from any attempt to terminate the agreement for reasons that are related to the party's own improper conduct.

With respect to section 2.2(d), the Commission accepts MREA/CCSA's addition of a commercially reasonable standard to apply to any effort that might be required to obtain a required registration or approval that was not previously obtained. Because participation in the program requires completion of most permitting processes, the Commission recognizes that there may be some required approvals that cannot be foreseen and therefore the Project Sponsor should have an opportunity to obtain such approvals using commercially reasonable efforts. The Commission adopts the same language for section 2.3(d) to apply to the Standard Buyer.

4. Article III – Term, Effective Date, Price, Interconnection, Market Participation

CMP proposes and the Commission accepts the addition of "Market Participation" to the title of this section.

Section 3.1 sets forth the term and effective date. The Commission structured the agreement so that it would have a construction period and a delivery period. CMP and

[12] MREA/CCSA Comments at 8.

MSEA/CCSA suggest changing the language so the construction period ends at the point in time when the project is "mechanically complete." The statute, however, uses the term, "commercially operable," which is defined in Chapter 312, as reflected in the Standard Contract.[13] As described above, the Commission has defined the delivery period as beginning on the date that the project is commercially operable, which means the project has been constructed, tested and is fully capable of generating electric energy.

MREA/CCSA also proposes the addition of "categories of allowed grounds for extension," including allowance of an "extension for a fee," which would allow the Project Sponsor to, in effect, pay for the privilege of an extended construction period. They also propose allowing an extension for a legal challenge to the project or force majeure; an extension for a system operator study; and an extension for good cause.

The Commission rejects these proposed additions to the standard contract. The statute specifies the 18-month timeframe for the completion of projects and, further, specifies that the standard contract must contain milestones. Chapter 312 provides that a project must comply with the milestones in the contract, providing that the Commission "may grant an extension for failure to meet a milestone for good cause."[14] The proposed extensions go beyond the scope of the good cause standard set forth in the rule. The Commission will not predetermine what circumstances constitute good cause. It will take up petitions for extension on a case-by-case basis, which will help ensure that the statutory mandate for project completion within 18 months is upheld. Additional discussion regarding project milestones is set forth below in relation to section 5.2.

With respect to section 3.2, the Commission accepts CMP's change of the title to "Payment to Subscribers and/or Project Sponsors."

CMP states that there are three options for how Bill Credits will be paid to subscribers and to the Project Sponsor. In the first option, the Standard Buyer pays the credit rate to all subscribers and then the Project Sponsor will invoice each subscriber to recoup its payment. In this scenario the Project Sponsor will not pay an administrative fee to the Standard Buyer for the processing of the Bill Credits.

In the second option, the Standard Buyer pays the credit rate to all subscribers and then invoices the subscribers on behalf of the Project Sponsor. The Standard Buyer would remit that payment to the Project Sponsor. If the Project Sponsor takes this option, the Project Sponsor can elect to have the Standard Buyer collect administrative costs for this service from the Subscribers.

In the third option CMP describes, the Standard Buyer applies the "net" bill credit to subscribers and then pays the Project Sponsor the remaining portion of the contract

[13] Chapter 312, § 2(H).
[14] Chapter 312, § 7(F).

rate. According to CMP, this third option is “less risky” for the Project Sponsor because it would not assume any customer collection risk.[15]

MREA/CCSA stated that they were amenable to options 1 and 3, at the Project Sponsor’s election.

The Commission concludes that the statute and rule contemplate a bill credit scheme that follows either option 1 or option 2 as described by CMP. The Project Sponsor may select which option it prefers the Standard Buyer to employ in processing bill credits for its subscribers. These options have been added to the standard contract.[16] If a Project Sponsor chooses to have the Standard Buyer collect from Subscribers on its behalf, section 3.2(a)(ii) makes clear that the Standard Buyer is acting only as the agent of the Project Sponsor and not in its capacity as a utility. This makes clear that the Standard Buyer is not obligated to engage in collection actions on behalf of the Project Sponsor and also to ensure that Subscribers who owe money to the Project Sponsor are not subject to collection provisions, such as the threat of disconnection, that apply in the utility-customer relationship.

The Commission rejects option 3 as proposed by CMP. Although it may be administratively easier for CMP to set up a “netting” procedure to process the bill credit, the resulting bill could be confusing and potentially misleading for subscribers. The Project Sponsor must maintain a direct relationship with, and responsibility to, its subscribers. The first two options for processing the bill credit will help to sustain the visibility of the Project Sponsor’s role in the program. Option 1 would have the Project Sponsor billing the subscriber directly and separately, which certainly is the most obvious means of ensuring continued contact between the subscriber and the Project Sponsor. In the second option the Standard Buyer would do the billing on behalf of the Project Sponsor, but the bill would reflect the Bill Credit as well as the fees it is collecting on behalf of the Project Sponsor. A bill that shows a “net bill credit” may not have the same level of transparency, potentially masking the additional fee for processing.

The Commission has added a new section 3.2(b) to set forth the process that the Standard Buyer must follow in applying bill credits to a subscriber’s bill when that subscriber is a participant in more than one shared distributed generation subscription or in a separate net energy billing project that allows for bill credits. The new section provides that the Standard Buyer will first reduce the subscriber’s consumption by any applicable kWh credits from a qualifying net energy billing arrangement that the subscriber has in place. Then, the Standard Buyer will apply bill credits from shared distributed generation resources to the subscriber’s bill in the order in which the subscriber entered into these individual contracts. The Project Sponsor has the obligation to provide the Standard Buyer with the order of such contracts so that the credits can be applied correctly. This section also explains that the Standard Buyer will

[15] MREA/CCSA, quoting comment by CMP at section 3.2(b) of redline of Shared Distributed Generation Agreement.
[16] Payment of administrative costs for these options is discussed below in relation to Article V.

store unused credits in separate "banks" for each kind of contract so that they will expire based on the term for each kind – 12 months for net energy billing credits and 24 months for shared distributed generation credits. The issue of banking unused credits is discussed in relation to section 5.3 of the contract.

The Commission accepts the utilities' edit to (now) section 3.2(d)[17] to provide that the Project Sponsors will pay for hourly metering of the energy production, rather than monthly.

Section 3.3 of the contract governs interconnection and requires the attachment of Exhibit B, which is a copy of the Interconnection Agreement. The parties suggested no edits to this section.

5. Article IV – ISO-NE, NMISA and GIS Obligations

The utilities drafted Article IV to govern ISO-NE and Generation Information System (GIS) obligations that arise in the context of procuring and selling the output of distributed generation resources. The Commission has accepted most of the language proposed by the utilities, with modifications described below.

In their comments, MREA/CCSA express discomfort with the approach proposed by the utilities wherein the Standard Buyer, acting as the Lead Market Participant (LMP), would potentially participate in all aspects of the marketplace, including the day-ahead and real-time energy markets. They explain that renewable resources are "unlikely to generate significant enough capacity revenue to offset costs and risks" of participating in the Forward Capacity Market (FCM). They propose restricting the Agreement such that the Standard Buyer as LMP would register the Distributed Generation Resource as a settlement-only generator. Alternatively, they propose that if the agreement allows for participation in the FCM, the Standard Buyer must bear the costs and risks associated with market participation because the Standard Buyer would realize the benefits of such participation.

The Commission finds it is inappropriate to restrict the Standard Buyer from participating fully in the energy marketplace, but it agrees that the risk must follow the revenue. The Commission adopts CMP's language, in large part, which describes and designates responsibilities for participation in the wholesale market, with the modification that all CMP references to "Company" have been converted to "Standard Buyer." The Commission also adopts some of the language suggested by MREA/CCSA that shifts the costs and risks of participating in the FCM to the Standard Buyer, assuming, that is, that the Standard Buyer elects to participate in the FCM. The Project Sponsor is required to provide information to the Standard Buyer so that it may participate in the FCM, if it chooses to do so.

[17] The creation of subsection 3.2(b) pushed the sequencing of the subsequent subsections by one letter.

The Agreement leaves open the possibility of the Project Sponsor electing to serve as the LMP, with energy to be transferred to the Project Sponsor through an Internal Bilateral Transaction (IBT). The contract directs the parties to negotiate such IBT in good faith. It also leaves open the option for the Project Sponsor to elect a Buyout Option to retain the rights for the project's capacity, as requested in MREA/CCSA's comments. The details of the buyout payment must be negotiated by the parties in the 90-day election period prior to the Commercial Operation Date.

MREA/CCSA also seek to delete language that CMP proposed that would make it clear that bill credits to subscribers could not commence until the Distributed Generation Resource has been registered with ISO-NE. MREA/CCSA point out that the responsibility lies with the Standard Buyer, with the Project Sponsor's cooperation, to obtain registration for market participation and that "the language creates a mismatch between the party with primary responsibility."[18]

It is important to ensure that the utilities are under no obligation to begin applying credits to subscribers' bills until there is revenue to fund those credits. The Commission has put in language making clear that there is no obligation to apply bill credits prior to the completion of ISO-NE registration but has also added language to ensure the parties act in a commercially reasonable manner to ensure the registration process proceeds in a timely manner.

With respect to Emera Maine's late-filed comments regarding issues unique to the Maine Public District section of its service territory, many of the issues address operational issues that go beyond the scope of contract issues. In any event, the Commission has added a new section 4.2(c), which provides that the agreement may be modified to reflect any additional NMISA obligations that may apply.

6. Article V – Obligations of the Parties

With respect to section 5.1, which governs the parties' joint obligations, MREA/CCSA take the position that the consumer protection provisions contained in section 9 of Chapter 312 should not be incorporated into the provisions of the Standard Contract for Shared Distributed Generation projects. Rather, they state the Commission's enforcement authority is independent of the contract obligations between the Standard Buyer and Project Sponsor.

The Commission disagrees. The statute establishing this program gave the Commission enforcement authority to protect subscribers from fraud and other unfair and deceptive business practices.[19] The Commission promulgated rules describing consumer protections and enforcement mechanisms.[20] The Commission will enforce the consumer protections in an adjudicatory proceeding if the circumstances warrant this approach. Nevertheless, it is important for the parties engaging in these shared

[18] MREA/CCSA Comments at 11.
[19] 35-A M.R.S. § 3486(6).
[20] Chapter 312, § 9.

distributed generation projects to affirm they will comply with the consumer protection provisions. A party's failure to abide by these important consumer protections may result in termination of the contract, which is an appropriate penalty as reflected in the statute.

With respect to (now) section 5.2(b),[21] MREA/CCSA seeks to have the 18-month period for the project to reach commercially operable status commence as of the Effective Date, which is defined as the date the parties sign the agreement. The Commission rejects this change because it is contrary to the language of the statute, which requires the project to be commercially operable within 18 months of "being awarded a contract,"[22] which will be the date the Commission issues an Order determining the results of the procurement process.

The Commission also rejects MREA/CCSA's suggestion to remove the sentence in this section requiring the Project Sponsor to adhere to the project milestones set forth in Exhibit C attached to the agreement. The Commission disagrees with MREA/CCSA's argument that the 18-month commercially operable deadline is the only milestone required by the statute.[23] The statute requires the standard contract to include an interconnection schedule "to ensure the project proceeds to commercial operation on a reasonable timeline."[24] It is logical to infer from this language, as well as the directive in the following paragraph that "failure to meet a milestone" could result in default, that the Legislature understood the construction of distributed generation resource projects would involve more than one milestone. The standard contract includes these milestones as a means to ensure that the 18-month statutory deadline is attainable and that the winning bids represent legitimate, attainable projects.

The Commission has added a reporting requirement to section 5.2(b). When the Project Sponsor has met a project milestone, it must notify the Standard Buyer, with a copy to the Commission, of its having met the milestone. This will allow the Commission to monitor progress of the project.

Section 5.2(c) provides relief for the Project Sponsor in the event that it finds itself unable to meet a project milestone. The Commission rejects MREA/CCSA's suggestion that the period for delays beyond the Project Sponsor's control be extended from 90 days to 150 days. To allow a delay of five months without Commission approval would be contrary to the legislative intent that these projects be commercially operable within 18 months.

[21] With the addition of Article IV, the Standard Agreement's numbering of subsequent Articles and sections has changed. Former section 4.2(b) is now section 5.2(b) and so forth. The numbers in this Order will reflect the numbers of the Articles and sections in the redlined and clean versions of the Standard Contracts attached to this Order.
[22] 35-A M.R.S. § 3484(7).
[23] MREA/CCSA Comments at 11.
[24] 35-A M.R.S. § 3484(7).

The Commission also rejects the suggested language allowing for a "delay caused by a legal dispute related to a Project permit" beyond the Project Sponsor's control.[25] A legal challenge to a Project Sponsor's permit could take a considerable period of time to resolve. If such an event were to occur, the Project Sponsor must seek an extension from the Commission, which will weigh the circumstances and determine if there is good cause.[26]

Section 5.2(d) governs the payment of the financial assurance deposit, which will be established by the Commission at the time of the contract award. MREA/CCSA questions when this deposit is due and whether it relates to the fee that should be required at the time of the bidding to ensure financial capability. The Commission has added language clarifying that the funds provided by the Project Sponsor at the time that it submitted its bid will be advanced to satisfy some portion of the financial assurance deposit.

Section 5.2(e) sets forth how a Project Sponsor will verify that it has met the statutory subscription requirements.[27] The Commission accepts MREA/CCSA's suggestion that the verification requirement becomes effective at the time the project is ready to commence commercial operation because the Project Sponsor may not be signing up subscribers significantly in advance of commercial operation.

The Commission agrees to the edits suggested by the utilities with respect to Section 5.2(i), which governs the security deposit required to support consumer protection provisions, to describe how the Standard Buyer would hold the money.

Section 5.2(j) governs the payment of the Standard Buyer's administrative costs. Pursuant to the statute and Chapter 312:

> If the project sponsor pays an investor-owned transmission and distribution utility's costs associated with billing and collection from a subscriber, at the request of the project sponsor the utility shall bill the subscriber on behalf of the project sponsor. Costs under this subsection are subject to review by the commission.[28]

Both the utilities and MREA/CCSA sought clarification on the payment of these administrative costs. The Commission has clarified the language in subsection 5.2(j) to specify that the Project Sponsor is obligated to pay administrative costs if it elects to have the Standard Buyer collect contract fees from its Subscribers.

Section 5.3 sets forth the Standard Buyer's obligations. The Commission accepts minor edits in relation to subsection 5.3(a). The Commission also accepts the suggested new section 5.3(b), which provides that the Standard Buyer shall accumulate

[25] MREA/CCSA redline at 9.
[26] 35-A M.R.S. § 3484(7).
[27] *See* 35-A M.R.S. § 3486(2).
[28] 35-A M.R.S. § 3487(2); Chapter 312, § 6(7).

hourly generation and determine the total amount of distributed generation for the resource for each calendar month.

The utilities and MREA/CCSA suggest extensive edits to subsection 5.3(c), which governs the logistics of the application of bill credits to subscribers' accounts. The Commission accepts most of these edits.

CMP had requested the addition of language that would address how bill credits would be applied if the Project Sponsor chose to have the Standard Buyer do a "net" billing approach to applying credits to the subscriber's bill while also taking out amounts the subscriber owes to the Project Sponsor. As set forth above in relation to subsection 3.2(a), the Commission rejects "Option 3" proposed by CMP.

The Commission accepts the parties' suggested edits to paragraph (4) in subsection 5.3(c)(i) relating to the monthly report the Standard Buyer will provide to Project Sponsor. The Commission also agrees with MREA/CCSA's edit that this monthly report include the value of bill credits being carried forward. This is important information for the Project Sponsor and also provides a tracking mechanism for how much credit is being used, and how much is not being used.

The Commission accepts the utilities' suggested paragraph (6), as agreed to by MREA/CCSA, which explains what happens with a subscriber's unused credits. MREA/CCSA suggested a new paragraph (7), which explains what happens when a subscriber's account is deactivated. MREA/CCSA's edits would allow the Project Sponsor to replace the deactivated subscriber with a replacement subscriber and allocate those credits to the new subscriber or to the "retail service account" of the distributed generation facility, which would mean the credits would benefit the Project Sponsor. The Commission declines to accept this process for allocation of credits. A subscriber has already paid for credits to the Project Sponsor. The subscriber is allowed to have those credits applied to a new account, that is, if the subscribers has moved to a new location within the Standard Buyer's service territory. If the subscriber has moved out of the Standard Buyer's service territory, the credits will expire, as will any unused credits. The Project Sponsor is entitled to payments from its subscriber for the value of the credits, but it is not entitled to the credits themselves. The language in subsection 5(c)(7) sets forth this understanding.

In addition, because these provisions describe duties that the Project Sponsor must perform to ensure the Standard Buyer is able to apply the bill credits accurately and efficiently, the Commission has added a sentence to subsection 5.2(f) requiring the Project Sponsor to fulfill the duties described in subsection 5.3(c).

The utilities, with the agreement of MREA/CCSA, have added extensive language to paragraph (ii) of subsection 5.3(c), which describes the process that the Standard Buyer will follow to pay the Project Sponsor the value it is entitled to for unsubscribed output from the shared distributed generation resource, including the value of the energy as monetized through the ISO-NE markets, as well as Renewable

Energy Credits and value received for capacity. The Commission accepts these edits to the standard contract.

The Commission adds a new subsection 5.3(e) to address the Standard Buyer's obligation to track its incremental costs and benefits, and to report those costs to the Commission on an annual basis as part of stranded cost proceedings. This section reflects a statutory duty placed on the Standard Buyer.[29]

7. Article VI – Events of Default

MREA/CCSA suggests language to extend the 30-day cure period for loss of a required permit needed to continue to operate the project to 150 days. The Commission rejects such a lengthy period. It would not be appropriate to allow a distributed generation project that has ceased to hold necessary permits and legal authorizations to operate without those permits and authorizations for such a lengthy period. The Commission has added language allowing the Project Sponsor to seek an extension if such a loss of legal authority were to occur.

MREA/CCSA reiterates its comment that consumer protection provisions should not be treated as contractual terms but rather should be subject to separate processes for Commission enforcement. As set forth above in relation to Article V, the Commission disagrees. The Commission understands the concern that a Project Sponsor would be in default and suffer the consequence of termination of the contract for even a de minimis violation of the consumer protection provisions outlined in the agreement. The Commission has modified two of these requirements to address these concerns.

With respect to subsection 6(g) regarding verification of subscription requirements, the Commission has added language providing an opportunity for the Project Sponsor to seek an additional cure period. With respect to subsection 6(h) regarding consumer disclosures, the contract now states that substantial compliance with this provision is required. The Project Sponsor is not to interpret this language as loosening the statutory requirement that Project Sponsors must provide disclosures to

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[29] 35-A M.R.S. § 3483(3). The statute requires the Standard Buyer to "implement a transparent mechanism to track and recover or distribute the eligible costs and benefits under this subsection incurred by procuring distributed generation resources pursuant to this chapter. The statute further provides that

> These eligible costs and benefits must be reviewed by the commission annually and allocated to and recovered from customers of the investor-owned transmission and distribution utility in whose territory the distributed generation resource is located through a process established by rule of the commission. The process established by the commission must be similar to the allocation of costs and benefits of long-term energy contracts in section 3210-F. Eligible costs include:
>
> A. Incremental costs of serving as the standard buyer;
> B. All payments or bill credits to customer, subscribers and project sponsors under each procurement pursuant to sections 3485 and 3486; and
> C. All revenue from sale of the output of distributed generation resources procured pursuant to this chapter.

consumers to whom they are marketing. It is critical that potential subscribers understand what they are signing up for – the costs, the benefits and the risks. The Commission understands, however, that it would be difficult for a Project Sponsor to show that every subscriber out of hundreds of potential subscribers received the disclosure form.

8. Article VII – Remedies in Event of Default

MREA/CCSA question whether the standard contract should contain a liquidated damages clause. They argue: "It is not clear that the Standard Buyer would suffer damages if a project failed to be commercially operable in the required timeframe and, even if the Standard Buyer were harmed, it is likely the extent of its damages would be determinable."[30] The Commission agrees that there is no need for a liquidated damages provision in this contract and has removed it. The standard provision for special and consequential damages will remain except for the final sentence, which refers to liquidated damages.

9. Article VIII – Dispute Resolution

The utilities and MREA/CCSA have proposed language regarding how to handle disputes between the parties to the agreement. The Commission agrees to most of the parties' edits to this section, with some modifications. The new provision 8.1 puts responsibility for resolving disputes on the officers or legally responsible members of their respective organizations. New section 8.2 provides that if the parties acting in good faith, which is a requirement of section 10 of Chapter 312, fail to resolve the dispute, the Parties will give notice to the Commission. This provision states that the Commission or its Consumer Assistance and Safety Division will commence proceedings to resolve the dispute.

10. Article IX – Confidentiality

The parties made no comments on this provision and therefore the standard contract language remains as proposed.

11. Article X – Miscellaneous Provisions

With respect to (now) section 10.1, which governs assignment, MREA/CCSA suggest adding a clause stating "either Party may assign this Agreement to an affiliate of said Party without prior written consent of the non-assigning Party." The Commission does not agree to this change. Allowing an affiliate of a Project Sponsor to step into the shoes of either party would be contrary to the intent of the statute, which requires a Project Sponsor to acquire the right to operate a distributed generation resource pursuant to the Shared Distributed Generation statute and program rules. The Project

[30] MREA/CCSA Comments at 12-13.

Sponsor must not be allowed to delegate its responsibilities to an affiliate without, at a minimum, consent of the Standard Buyer. Similarly, a utility serving as the Standard Buyer must not be allowed to assign the rights and obligations flowing from the agreement to an affiliate without prior written consent.

B. Commercial and Institutional Distributed Generation Contract

The Commission adopts the edits and changes described above to the standard contract that governs distributed generation for a commercial or institutional (C/I) customer, to the extent that such edits apply. The following comments refer to edits and changes that are specific to the C/I distributed generation standard contract.

1. Article I - Definitions

The CMP redline changes the term "Project Sponsor" to "Customer." The utilities also suggested changing the definition of Project Sponsor in the standard contract to reflect the use of the term Customer to be referring to Project Sponsor unless the C/I customer has designated another entity to act as the Project Sponsor. MREA/CCSA believe the use of the term Project Sponsor "makes more sense in the context of the agreement, and if an end-user does submit a bid for a C/I project in the procurement, it will meet the definition of 'Project Sponsor.'"[31] They further comment "neither 35-A M.R.S. § 3485 nor Chapter 312 limit a C/I DG Resource from having multiple C/I customer subscribers. Therefore, MREA and CCSA suggest pluralizing references to the Project Sponsor's subscribers in the C/I DG Procurement Agreement."[32]

The statute provides a definition of Project Sponsor to include "[a] commercial or institutional distributed generation resource"[33] as well as a definition for "commercial or institutional customer" to mean a "nonresidential customer of an investor-owned transmission and distribution utility in the State."[34] The term "project sponsor" and "customer" can be used interchangeably, except in instances in which the C/I customer designates another entity to serve in this capacity. The Commission has maintained the use of the term "Project Sponsor" to provide consistency in the standard contracts. If the context of a particular arrangement involving a C/I distributed generation resource warrants use of the term "Customer," the parties should make that change.

The Commission disagrees with MREA/CCSA's argument that a C/I customer can have multiple accounts and subscribers. In describing how bill credits and payments to a C/I customer operate, the statute specifically refers to a commercial or institutional *customer*, not *customers*.[35] As such, the C/I entity is entitled to a credit against its bill. It may then choose to have that credit distributed among its own multiple

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[31] MREA/CCSA Comments at 8.
[32] *Id.*
[33] 35-A M.R.S. § 3481(14).
[34] *Id.* § 3481(3).
[35] *Id.* § 3485(2).

accounts,[36] but it has no statutory authority to have subscribers. A Project Sponsor with subscribers must follow the program guidelines for a shared distributed generation resource, including the statutory subscription requirements.[37]

2. Article III – Term, Effective Date, Price, Interconnection

Subsection 3.2 discusses how the bill credit will be applied to the Project Sponsor's bill. Because the C/I Project Sponsor does not have subscribers, the bill credit is applied to the Project Sponsor's bill. The Project Sponsor may choose to have the Standard Buyer distribute the Bill Credits to multiple accounts under the Project Sponsor's primary account. The process for allocation of bill credits is set forth in section 5.3 of the C/I standard contract.

3. Article IV – ISO-NE, NMISA and GIS Obligations

MREA/CCSA expresses an interest in allowing the C/I Project Sponsor to elect to act as LMP.[38] Therefore, the Commission has used the same language for the C/I standard contract as the language used in the Shared Distributed Generation standard contract. The Commission also added language stating that the obligations of the parties that apply in the ISO-NE context also apply with respect to NMISA market obligations and, further, to the extent NMISA market obligations are distinct from the ISO-NE obligations, the parties may modify the contract accordingly.

4. Article V – Obligations of the Parties

The Commission has removed subsection 5.1(c) from the C/I standard contract because it deals with consumer protection provisions that apply only to shared distributed generation.[39]

CMP recommends striking subsection 5.2(d), which requires the Project Sponsor to provide financial assurance for the project.[40] As set forth above, section 9 of Chapter 312 of the Commission's Rules sets forth consumer protection provisions that apply only to shared distributed generation projects.[41] The financial assurance provision contained in subsection 5.2(d) refers to security that a Project Sponsor must pay at the time of the contract award to ensure performance of the contract, particularly during the construction period. The Commission retains this subsection with the modifications made in the Shared Distributed Generation standard contract.

[36] See discussion of how the bill credits operate in relation to subsection 5.3.
[37] *See* 35-A M.R.S. § 3486(2).
[38] MREA/CCSA Comments at 10.
[39] 35-A M.R.S. § 3486(6); Chapter 312, § 9(A).
[40] CMP comment on redline for C&I standard contracted at 16.
[41] Chapter 312, § 9(A).

Section 5.3 sets forth the Standard Buyer's obligation to apply bill credits to the Project Sponsor's bill. Subsections 5.3(d) and (e) describe the methodology that the Standard Buyer will use to apply bill credits to sub-accounts, referred to as "secondary accounts," which the Project Sponsor will identify on an accompanying exhibit. The Project Sponsor may elect to use a percent allocation or a cascading basis for distribution of the credits to these sub-accounts. Subsection 5.3(f) explains that the Standard Buyer will only accept changes to the allocation of bill credits upon notice from an authorized delegate identified by the Project Sponsor. The Commission has accepted the utilities' proposed language with some minor modifications.

In their redline, MREA/CCSA proposes a process wherein the Standard Buyer would apply unused credits *before* applying the current month's credits.[42] The Commission rejects this approach. In determining a bill credit for the C/I Project Sponsor, the statute provides:

> The bill credit allocated to a commercial or institutional customer must be based on the total kilowatt-hours of energy production of the distributed generation resource for the previous month. For each billing month, the value of the credit must be calculated by multiplying the number of kilowatt-hours by the contract rate. A payment to a commercial or institutional customer must be credited against the customer's monthly electricity bill in accordance with section 3487.

Section 3487(1) provides:

> If the value of a credit to be applied to a customer's bill under this chapter is less than the amount owed by the customer at the end of the applicable billing period, the customer must be billed for the difference between the amount shown on the bill and the value of the available credit. If the value of the credit to be applied to a customer's bill under this chapter is greater than the amount owed by the customer at the end of the billing period, the remaining value of the credit must carry over from month to month.

Section 6 of Chapter 312 relied on this statutory language to describe the carryover of unused credits for a C/I customer, adding that "[a]ny credits carried forward that remain unused after 24 months shall have expired." As the Commission stated in the Order adopting Chapter 312, the use of a 24-month period to carry over unused credits "provides flexibility to participating customers with respect to their use of the credits, but prevents credits from being used so far in the future that there could be a mismatch between the value of the output to ratepayers and the cost to ratepayers resulting from the credits."[43] This also applies to the Shared Distributed Generation contract.

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[42] MREA/CCSA redline at 14.
[43] Order Adopting Chapter 312 at 6.

The utilities propose removing the subsection describing the Standard Buyer's obligation to hold a financial assurance deposit. As explained above, the C/I standard contract must retain this provision because the financial assurance obligation at issue is not related to consumer protection, but rather to the Project Sponsor's performance of the contract as a whole.

To be consistent with the standard contract for shared distributed generation projects, the Commission has added a new subsection 5.3(h) to set forth the recording and reporting requirements of the Standard Buyer in relation to its administrative costs.

C. Application of Standard Contract

In requiring the Commission to provide the form standard contracts for distributed generation projects, the statute made clear that such contracts would apply to "all standard buyers" and that such contracts "must be substantially identical to the extent commercially reasonable."[44] Commission staff has consulted with both the utilities who will serve as Standard Buyers as well as the project developers, or their representatives, who expect to become Project Sponsors. The standard contracts are written to provide some flexibility for the parties but in many crucial respects reflect statutory and regulatory requirements. Unexpected circumstances arise, which may require modification of the contract language as provided in the standard contracts. Parties seeking to deviate from these standard contracts in any material fashion must seek approval of such modifications from the Commission.

O R D E R

The Director of Electric and Gas Industries hereby ORDERS

1. The Standard Contracts will be used by Project Sponsors and Standard Buyers following the procurement process for the output of distributed generation resources.
2. Any Party seeking to modify any provision of the Standard Contracts in any material manner must seek approval of the Director of Electric and Gas Industries.

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

BY ORDER OF THE DIRECTOR OF ELECTRIC AND GAS INDUSTRIES

Faith Huntington

[44] 35-A M.R.S. § 3484(7).