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PUBLIC UTILITIES COMMISSION

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April 4, 2025

Honorable Mark W. Lawrence, Senate Chair
Honorable Melanie Sachs, House Chair
Members, Joint Standing Committee on Energy, Utilities and Technology
100 State House Station
Augusta, Maine 04333

Re: 2024-00235 Request for Proposals for the Sale of Energy and Renewable Energy Credits to Promote the Reuse of Contaminated Land Pursuant to 35-A M.R.S. S. 3210-J

Dear Senator Lawrence, Representative Sachs, and Members of the Joint Standing Committee on Energy, Utilities and Technology (Committee):

At its deliberative session held on April 1, 2025, the Public Utilities Commission (Commission) considered the proposals received in response to its Request for Proposals under 35-A M.R.S. § 3210-J and Chapter 397 of the MPUC Rules (the Contaminated Land Procurement or the RFP), which was issued on August 30, 2024.[1] Although the Commission saw robust participation and received sufficient bids to render it competitive, the Commission concluded that none of these bids were ratepayer beneficial (a threshold requirement for any project to receive an award). As a result of this finding, the Commission did not award any contracts in the first round of this procurement.

Because the Commission must initiate a second round of this procurement within twelve months of concluding the first round (*see* 35-A M.R.S. 3210-J(2)(D)), the Commission is sharing its experience so that the Committee has the information necessary to amend the statute, if appropriate, to increase the likelihood of a successful second round.

[1] The RFP sought proposals for energy and renewable energy credits (RECs) from eligible Class IA resources, and the Commission was authorized to award contracts up to 1,573,026 MWh in aggregate.

Overview of Eligibility Requirements

Below is a brief overview of the statutory eligibility requirements that were relevant to the results of the first round of this procurement.

First, the Commission may only select projects that are ratepayer beneficial.

Second, because the purpose of the legislation is to advance the siting of renewable energy on PFAS-contaminated land, there is a statutory preference for projects that are located on PFAS contaminated land (as defined by the Maine Department of Agriculture, Conservation and Forestry) with a secondary preference for those that minimize the use of farm or forested land.

And finally, the RFP contained various other eligibility requirements set forth in the statute, including that the resource must either have a fully executed interconnection agreement (IA) or a system impact study (SIS) must have commenced, if the relevant Regional Transmission Organization or Independent System Operator requires one.

Lessons From The First Round Of This Procurement

In its analysis, the Commission observed the following obstacles and opportunities that, if addressed, may increase the likelihood that future procurement rounds are successful.

1. *Maturity Hurdles*

Due to the procurement's timing, Staff observed two significant hurdles bidders faced in the initial round: (a) project maturity and (b) eligibility for the statutory preferences. Future procurement rounds are unlikely to experience these hurdles to the same degree.

a. *Project Maturity*

The statute requires that, to be eligible for this procurement, any system impact study (SIS) required by the New England independent system operator (ISO-NE) must have commenced. *See* 35-A M.R.S. § 3210-J(1)(C). Although this requirement ensures that eligible proposals are mature projects, it is unlikely that an SIS had commenced for projects developed specifically in response to this legislation at the time the first round of this procurement, which began only fourteen months after the initial legislation and merely one month after the Commission adopted the relevant final rule (Chapter 397).

A proposed project may spend years[2] in ISO-NE's interconnection queue before ISO-NE commences a relevant SIS. In an effort to address these long wait times, ISO-NE is in the process of implementing queue reforms, but even as recently as Q4 2024 the average wait time for a project to reach the point of an interconnection agreement or SIS still exceeded one year. As a result, some projects developed in response to this legislation may have been far from ISO-NE commencing an SIS and thus ineligible for the first round of the procurement.

As projects mature—and now that the ISO-NE interconnection queue has reopened to new projects—the Commission may see more proposals for the type of projects targeted by this legislation. Alternatively, the Committee may wish to remove the requirement that an SIS has commenced for eligible projects so that less mature projects are eligible to receive an award.[3]

b. Preferences

The procurement allowed eligible bidders to claim preferences. However, the first procurement round did not receive a strong turnout for projects claiming either preference. The preferences are:

(1) a Primary Preference for projects with at least 90% of the project footprint located on Contaminated Land; and

(2) a Secondary Preference for projects where no more than 10% of a project's footprint is located on farmland or forested land or, if sited on uncontaminated farmland, makes no more than 10% of the uncontaminated farmland's total footprint unusable for its current agricultural purpose.

Because the statutory purpose of Section 3210-J is, at least in part, to incentivize projects that would be eligible for these preferences, the Committee may wish to consider how to further encourage the siting of projects to make use of contaminated land and

[2] The expected time in the ISO-NE interconnection queue is volatile and has increased dramatically in recent years from approximately two years for projects built in 2018 to over four years for projects built in 2023.

[3] Receiving an award earlier in the development process may provide the benefit of offtake certainty during the development phase, which may increase the likelihood that the project ultimately reaches commercial operation. On the other hand, however, removing the maturity requirement may increase the likelihood that unviable projects receive awards.

minimize the impact to farm and forested land.[4] It is also possible that there are some projects in development that will be eligible for a preference that were simply not mature enough to be eligible for the project (i.e., an SIS had not commenced). As these projects mature, the Commission may see projects able to claim one of the statutory preferences in future rounds.

2. *Ratepayer Benefit Standard*

The Act requires that any selected project be "ratepayer beneficial," but it does not define that standard. Informed by its understanding of what constitutes a "ratepayer benefit," and consistent with the guidelines set forth in Section 5(D)(1) of Chapter 316 of the MPUC Rules, Chapter 397 and the relevant RFP adopted an analysis of ratepayer benefit that only considers the benefits that reduce the cost of energy supply or delivery and / or RECs in a quantifiable way. Thus, to be ratepayer beneficial, the bid prices must be competitive relative to the market value of the respective products or offer some other quantifiable benefit.

With direction from the Legislature, the Commission could modify its ratepayer benefit analysis to incorporate unquantifiable benefits, which may result in more successful bids. However, it is likely that ratepayer bills would increase rather than decrease as a result of those awards.

3. *Untethering RECs From Energy So They Can Receive Independent Awards Or Be Sold Independent From An Award For Energy*

The statute sets forth that the Commission may award "contracts for energy *and* renewable energy credits[.]" 35-A M.R.S. 3210-J(2) (emphasis added).

The Commission interpreted the statute as requiring *it* to procure both energy and RECs in the same process, but not that each selected project was required to deliver both products. This statutory construction allows developers to submit bids that either offer only one of these products or offer both of these products with separate or bundled pricing. Such optionality gives the Commission flexibility to select the best combination of prices for energy and RECs, which increases the likelihood that the Commission receives ratepayer beneficial bids for which it can award a contract.

It is possible, however, that some developers took the statutory language as applying to *them* (i.e., requiring that they submit bids for the delivery of both energy and RECs). If developers adopted this approach, they may have submitted combined bids for both products, which unnecessarily limited their options for the sale of their products and

[4] For example, a too-stringent definition of "contaminated land" may disincentivized holders of unusable farmland to work with renewable developers or bid into this procurement.

rendered their proposals unbeneficial to ratepayers. To avoid this, a clarification—either by the Legislature or the Commission—that bids need not be submitted for both products may result in improved bid prices in future rounds of this procurement and, in turn, increase the likelihood that proposals are ratepayer beneficial.

4. *Tying RECs to Standard Offer*

Assuming RECs are included in future procurements, the Commission suggests that the Committee consider removing the requirement that the acquired RECs are assigned to a standard offer service provider in order to satisfy that provider's renewable resource portfolio requirements. *See* 35-A M.R.S. §3210-J(4). This change may be advisable because the Commission does not have visibility into the sourcing or contractual arrangements related to the standard offer suppliers' procurement of RECs, and as a result, requiring assignment of RECs purchased through this procurement has the potential to increase risk premiums or otherwise increase standard offer pricing. This would, at least in part, depend on how the rule implementing the transfer of RECs is crafted.

5. *The Impact of Local Permitting on Renewable Projects*

Local permitting requirements may impact the feasibility of projects and thus the success of future rounds of this procurement. Indeed, at least one developer withdrew its project as a result of new local permitting requirements that rendered the project unviable. This impact may continue in future rounds, resulting in more projects dropping out or not submitting a proposal at all.

The Commission remains available if the Committee has questions or requests additional information.

Sincerely,

Philip L. Bartlett II

cc: Lindsay Laxon, Legislative Analyst, Office of Policy and Legal Analysis