COMMENTS OF THE
MAINE PUBLIC UTILITIES COMMISSION

The Maine Public Utilities Commission ("MPUC"), by and through counsel, Lisa Fink, State of Maine Public Utilities Commission, 101 Second Street, Hallowell, Maine, 04347, respectfully files the following comments in response to the October 31, 2011 updated request by Bangor Hydro Electric Company ("Bangor Hydro" or "Company") for a limited waiver from the Commission’s Standards of Conduct in order to permit transmission personnel to engage in limited marketing functions to effectuate resales of energy to ISO-NE’s spot markets as related to the Rollins Project or for similar circumstances in the future (October 31 filing).

I. BACKGROUND

On June 13, 2011, Bangor Hydro submitted a request pursuant to Section 358.1(d) of the Commission’s regulations for a limited waiver of the Standards of Conduct for the limited purpose of engaging in ministerial actions necessary to effectuate spot market resales of energy purchased from generating facilities as mandated by the laws of the State of Maine (the “June 13 Filing”). Bangor Hydro is required by the Maine Public Utilities Commission ("MPUC") to purchase the output of certain generating facilities but is simultaneously prohibited from engaging in retail sales of energy to customers
located in Bangor Hydro’s historic retail service territory. Bangor Hydro is therefore required to serve as a mere “pass through” of any energy interconnected with its transmission system that it is required by the MPUC to purchase.

In this earlier request, Bangor Hydro requested a limited waiver of the Commission’s Standards of Conduct to permit transmission function personnel to engage in the limited and ministerial marketing functions described above necessary to effectuate resales of energy to ISO-NE’s spot markets as related to the Rollins Project or for similar circumstances in the future.

On September 15, 2011, the Commission issued an order denying Bangor Hydro’s request without prejudice finding that the Company had not met the requirements to be eligible for a waiver of the Standards of Conduct, that Bangor would retain limited functional control over the transmission system, and that Bangor Hydro would be engaged in the resale of energy in the ISO-NE real-time market. The Commission also identified three areas of concern: First, that Bangor Hydro’s request “fail[ed] to specify whether it has access to information concerning the operation of the transmission facilities that it turned over to [ISO New England].” Second, that it was “not clear from Bangor Hydro’s filing whether Evergreen Wind would be required to enter all of the output from Rollins Project that Bangor Hydro is required to purchase or whether it would have discretion to change that amount depending on prices, and whether

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1 During its 2006 session, the Maine Legislature enacted an Act to Enhance Maine’s Energy Independence and Security (Act). P.L. 2005, ch. 677. Part C of the Act (codified at 35-A M.R.S.A §§ 3210-C, 3210-D) directed the MPUC to establish an electric resource adequacy plan and authorized the Commission to direct investor-owned transmission and distribution (T&D) utilities to enter long-term contracts for capacity resources and associated energy. As required by the Act, the MPUC adopted rules to implement the Act and its provisions. Bangor Hydro currently lacks a retail service territory or retail service obligations. 35-A M.R.S.A. § 3205(2).
2 September 15 Order at PP 1, 12.
3 Id. at P 13.
Bangor Hydro has the ability to influence that decision.” The Commission stated that “Bangor Hydro’s filing also does not address whether it would earn a profit or margin from resales.”

The September 15 Order concluded by stating that Bangor Hydro “[has] 60 days to either (1) submit information demonstrating that it has no access to information concerning the operation of the transmission facilities to the ISO/RTO and that it obtains information about such matters only by viewing the ISO/RTO’s pertinent OASIS, or (2) begin compliance with the Commission’s Standards of Conduct requirements.”

II. AMENDMENT TO PRIOR WAIVER REQUEST

In response to the Commission’s September 15 Order, Bangor Hydro’s October 31 filing proposed to amend its prior waiver request to in two ways: First, Bangor Hydro amended its prior request to the Rollins Project (which was described in the June 13 filing) and the soon-to-be-energized Exeter Agri-Energy Project. Second, Bangor Hydro has committed, as a condition of the waiver, not to engage in any purchases or sales of wholesale electric capacity or energy except for those required by the laws of the State of Maine and/or the regulations or orders of the MPUC.

III. SUPPLEMENTAL INFORMATION

Bangor Hydro’s October 31 filing also provided the following additional information:

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4 Id.
5 Id.
6 Id. at Ordering Paragraph.
A. **Access to Transmission Information**

According to the Company’s October 31 filing, Bangor Hydro personnel have limited access to non-public transmission information concerning its transmission facilities subject to the functional control of ISO New England (“ISO-NE”). Bangor Hydro owns two “types” of transmission facilities: (i) “Pool Transmission Facilities” and (ii) “Local Transmission Facilities.” According to the Company, the former, typically high voltage, non-radial transmission lines, are subject to the functional control of ISO-NE. The latter, typically lower voltage and/or radial lines, are not subject to ISO-NE functional control (although rates for use of these lines are subject to Schedule 21-BHE of the ISO-NE Tariff).

Bangor Hydro system operators have access to real-time information regarding both Pool Transmission Facilities and Local Transmission Facilities owned in whole or in part by Bangor Hydro. The Company asserts that that its personnel need access to such information to maintain reliability and operation of the lines, and that it is the Company, not ISO-NE, that ultimately bears responsibility to maintain operation of these lines, both Pool Transmission Facilities and Local Transmission Facilities.

Bangor Hydro also asserts that personnel have access to transmission service requests over Local Transmission Facilities. Again, due to the division of responsibilities between Bangor Hydro and ISO-NE, Bangor Hydro asserts that such access is necessary as it is Bangor Hydro personnel are ultimately responsible for granting or denying transmission requests over Bangor Hydro’s Local Transmission Facilities.
Bangor Hydro’s October 31 filing further explains that back office personnel have access to certain after-the-fact information regarding transmission loadings and use, as is necessary to verify metered energy readings and prepare bills for transmission service over Local Transmission Facilities.

According to the Company, continued access to the above described information is not inconsistent with its request for limited waiver of the Standards of Conduct. Bangor Hydro reiterates its prior statements made in the June 13 filing that the Company has no ability to take advantage of any non-public transmission information to which it has access. The limited marketing functions required to effectuate the sales from the Rollins and Exeter Agri-Energy Projects to the ISO-NE markets, according to the Company, does not provide any means to capitalize on such non-public transmission information.

B. **Additional Issues Raised in the September 15 Order**

As noted above, the Commission raised the question in the September 15 Order whether “Evergreen Wind would be required to enter all of the output from Rollins Project that Bangor Hydro is required to purchase or whether it would have discretion to change that amount depending on prices, and whether Bangor Hydro has the ability to influence that decision.” Bangor Hydro’s October 31 filing clarifies that Evergreen Wind must enter 20 percent of the output from the Rollins Project to go to Bangor Hydro and the balance to Central Maine Power Company. The October 31 filing further states that Evergreen Wind has no ability to change these amounts and Bangor Hydro has no ability to influence any decision-making by Evergreen Wind (insofar as Evergreen Wind has no discretion to alter these amounts).
In addition, the September 15 Order stated that “Bangor Hydro’s filing also does not address whether it would earn a profit or margin from resales.” The Company’s October 31 filing clarifies that it would not earn any profit or margin from resales that would inure to the benefit of shareholders. Rather, the Company asserts that any profit or margin from such sales – be it from the Rollins Project or the Exeter Agri-Energy Project – would be refunded directly to retail customers through Bangor Hydro’s mechanism for recovering for long-term contracts.8

IV. COMMENTS

The MPUC supports Bangor Hydro’s request for a limited waiver to the Commission’s Standards of Conduct. As Bangor represents in its filing, the Company is obligated under Maine law and the MPUC’s directives to purchase twenty percent of the output from the Rollins Project. Bangor Hydro will serve only as the pass through entity for the power ultimately delivered to the ISO-NE market. Further, the Company will have no incentive to exercise control or preference in effectuating transmission arrangements for the delivery of energy to market as any “earnings” on the pass through sales will be passed back to retail ratepayers and no profit will inure to the benefit of the Company’s shareholders.

Further, granting of Bangor Hydro’s request for a limited waiver will be consistent with the interests of Maine’s ratepayers. Maine law allows utilities to recover certain costs relating to long-term contracts, and the costs or benefits of these contracts

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ultimately flow to Bangor Hydro’s retail ratepayers.\(^9\) Sale of the energy into ISO-NE’s
day-ahead or real time market could result in the greatest value for Bangor Hydro’s
ratepayers. Indeed, failing to grant the limited waiver sought by Bangor Hydro here
would have the effect of imposing additional costs on Bangor Hydro’s customers (i.e.,
acquisition and assignment of separate personnel in order to perform limited marketing
and transactional functions and related costs of compliance) without obtaining any
market-protecting benefit. It is, therefore, in the interests of Maine’s ratepayers for
Bangor Hydro to be able to perform the limited and ministerial functions necessary to
effectuate resales of energy to ISO-NE’s spot markets for the Rollins Project or for
similar circumstances in the future without being subject to the standards of conduct.

\(^9\) Title 35-A of Maine Revised Statutes provides:

The [MPUC] shall ensure that an investor-owned transmission and distribution utility
recovers in rates all costs of contracts entered into pursuant to subsection 3, including but
not limited to any impacts on the utility's costs of capital. A price differential existing at
any time during the term of the contract between the contract price and the prevailing
market price at which the capacity resource is sold or any gains or losses derived from
contracts for differences must be reflected in rates and may not be deemed to be
imprudent.

35-A M.R.S.A. § 3210–C (8)
V. CONCLUSION

WHEREFORE, for the reasons discussed above, the MPUC requests that the Commission grant Bangor Hydro’s limited waiver request to the Commission’s Standards of Conduct.

Dated: November 15, 2011

Respectfully submitted,

/s/ Lisa Fink

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing document either by first class mail or electronic service upon each party on the official service list compiled by the Secretary in this proceeding.

Dated at Hallowell, Maine, this 15th day of November, 2011.

/s/ Benjamin J. Smith
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