

# REDACTED

STATE OF MAINE  
PUBLIC UTILITIES COMMISSION

Docket No. 2014-00024

February 06, 2015

MAINE PUBLIC UTILITIES COMMISSION  
Request for Proposals of Long-Term  
Contracts Under 35-A M.R.S. 3210  
Pertaining to Central Maine Power  
and Emera Maine

ORDER DIRECTING  
UTILITY TO ENTER  
INTO LONG-TERM  
CONTRACTS  
(PART II)

Vannoy, Chairman; LITTELL, Commissioner<sup>1</sup>

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## I. SUMMARY

Through this Order, the Commission directs Central Maine Power (CMP) and/or Emera Maine (EME) to enter into long-term contracts for the capacity and associated energy from two projects located in Maine: the Weaver Wind Project (Weaver Wind), a 72.6 MW facility proposed to be located in Hancock County; and the Highland Wind Project (Highland Wind), a 44 MW facility proposed to be located in Somerset County.<sup>2</sup> We issue this decision in two parts. On January 8, 2015, the Commission issued its Part I Order that contained its decision in this proceeding.<sup>3</sup> This Part II Order contains the background, analyses and reasoning underlying the decision in this proceeding.

## II. BACKGROUND

During its 2006 session, the 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. § 3210-C) authorizes the Commission to direct investor-owned transmission and distribution (T&D) utilities to enter long-term contracts for capacity

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<sup>1</sup> Chairman Welch took part in this decision during a Deliberation Session held on December 16, 2014 in which the Commission voted two to one in favor of approving these two term sheets. At this Deliberation, Commissioner Vannoy dissented in this decision and his dissent is attached hereto. Chairman Welch has since retired from the Commission.

<sup>2</sup> The Commission will determine the utility counterparty to the contracts when it reviews the contracts.

<sup>3</sup> The Part I Order, issued on January 8, 2015, contained an error listing the nameplate capacity of the Weaver Wind Project as 99 MW, the correct capacity of the facility is 72.6 MW.

resources and associated energy. As required by the Act, the Commission adopted rules to implement its long-term contract authority (Chapter 316).

Chapter 316, § 5.B. provides that the Commission solicit bids for long-term contracts with capacity resources through the issuance of a request for proposals that contains all standards, procedures and requirements for the solicitation process, as well as a standard form contract. On February 5, 2014, the Commission issued its RFP to determine whether cost-saving qualifying new renewable capacity resource projects pursuant to 35-A M.R.S. § 3210-C and Chapter 316 of the Commission rules. Pursuant to the RFP, initial proposals were due on or before April 4, 2014. The Commission received multiple timely submissions. After Staff discussions of initial proposals with the RFP respondents, three proposals were put out for comment to the Office of the Public Advocate (OPA), CMP, and EME and submitted to the Commission for formal consideration. In addition to the Weaver Wind and Highland Wind projects, the [REDACTED] Landfill Gas Project, a 3.2 MW project located in Penobscot County was submitted to the Commission for consideration.

### III. CONTRACTING AUTHORITY

#### A. Overview

As stated above, section 3210-C of Title 35-A, provides the Commission with the authority to direct investor-own utilities to enter into long-term contracts for capacity and energy when advantageous for Maine ratepayers under the statutory criteria. The underlying purpose of this authority, in the Commission's view, is to take advantage of opportunities to use long-term contracts for capacity and energy with utilities as a means to lower capacity and energy costs and otherwise benefit Maine ratepayers. A long-term contract with a creditworthy counterparty such as a utility can be very valuable to developers or owners of generation resources and may be necessary to obtain financing for new projects. Accordingly, project developers and owners may be willing to offer utilities contractual terms that would be beneficial to electricity ratepayers to obtain a long-term contract. For example, project developers or owners may be willing to sell capacity and energy at a discount from expected future prices. Such contracts may also provide a low-cost hedge against possible rising electricity prices. Moreover, by allowing for financing of projects and subsequent development that might not otherwise occur, long-term contracts could facilitate the construction of generation facilities in Maine. Such new generation may serve to lower capacity and energy costs in Maine, enhance reliability, reduce volatility and greenhouse gases and promote the State's renewable energy development policies. See 35-A M.R.S. §3210-C (2) & (3).

#### B. Statute

Section 3210-C specifies that the Commission may direct investor-owned T&D utilities to enter into long-term-contracts for "capacity resources" and any available energy associated with the capacity resource to the extent that the purchase of the energy fulfills the State's renewable energy expansion policies, or will lower the cost of electricity for ratepayers. 35-A M.R.S. § 3210-C(3). The statute specifies that the

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Commission select proposals that are competitive and the lowest cost relative to similar bids. Among such proposals, the statute provides a priority order that establishes new resources as well as renewable resources as a high priority in the selection of proposals. 35-A M.R.S. § 3210-C(4).

Section 3210-C also specifies that the long-term contracts should be no more than 10 years unless the Commission finds that a longer term to be prudent. Finally, the section requires the Commission to ensure that long-term contracts be consistent with the State's goals for greenhouse gas reduction and the regional greenhouse gas initiative.

#### C. Implementing Rules

The Commission's long-term contracting implementing rules (Chapter 316) state that contracts for capacity resources may not exceed the amount necessary to ensure the reliability of Maine's grid or to lower customer costs. Specifically, the rules state that the Commission may authorize a contract for capacity resources if: 1) the contract is a least cost means to address a local grid reliability need; 2) the contract is necessary for the resource to be developed, the resource will significantly lower regional capacity costs, and the contract prices are not expected to be higher than market prices; or 3) the contract prices are significantly below expected market value. The rules further state that the Commission may authorize contracts for associated energy if: 1) the contract is necessary to fulfill the State's new renewable resource policy, is necessary for the resource to be developed, and the contract prices are not expected to be higher than market prices; or 2) the contract prices are significantly below expected market value. Ch. 316, §5.

### IV. **COMMENTS**

#### A. Office of the Public Advocate

The Office of the Public Advocate (OPA) submitted comments on the three proposals on November 11 and December 5, 2014.<sup>4</sup> The OPA comments supported approval of Weaver Wind and submitted comments regarding the Highland project. Regarding Weaver Wind, the OPA stated that, unlike previous long term contract proposals, both proposed and approved, this contract does not rely on projected benefits in the final years of the contract to satisfy the ratepayer benefit standard. While the later years of the contract show substantial benefits under all scenarios considered by Staff, the contract appears to begin providing benefits relatively shortly--by the sixth years of its 25-year term—under even conservative scenarios. The

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<sup>4</sup> As a threshold matter, the OPA raised a concern about the lack of clarity with regard to the process and objectives of seeking proposals for long-term contracts pursuant to 35-A M.R.S. 3210-C. The Commission will seek to address these concerns in future requests for long-term contract proposals.

OPA suggested that the London Economics International (LEI)<sup>5</sup> market price projections used by Staff to analyze the long term contract proposals may reflect overly optimistic assumptions about the state of the New England electricity and gas supply markets over this six-year period, and therefore understate the potential benefits of this project both in the near term and over the life of the contract. In addition, the OPA stated that the mechanism included in the term sheet offers reasonable protections against differences between the zonal and nodal Locational Marginal Price (LMPs), by allowing for an adjustment to the subsequent year's contract price in the event that the average value of the energy delivered at the node varies by more than 10% from the Maine zonal price.

Turning to Highland Wind, the OPA took no position on whether the contract should be approved. However, the OPA noted that under the economic analysis prepared by Staff, the Highland Wind contract would begin to benefit ratepayers within the first seven years under all but the most conservative scenarios considered. The contract therefore, appeared likely to reduce costs to ratepayers, and thus satisfy the requirements of Section 3210-C; however, the OPA expressed reservation about the "Allowable Curtailment" provision in the contract as well as uncertainty regarding extension of the production tax credit for wind facilities. The OPA noted that the uncertainty created by these two unresolved issues created risk for ratepayers that were not adequately addressed in the proposed term sheet. The OPA concluded its comments on Highland Wind by stating that, "while a conditional approval may be appropriate under these circumstances, we would expect that any such material change to the term sheet would require further Commission approval." *Request for Proposals of Long-Term Contract Under M.R.S.A. §3210-C, Docket 2014-024, Confidential Comments of the Public Advocate, Appendix B (December 5, 2014).*

The OPA did not support the approval of [REDACTED]. In its comments, the OPA stated that the economic analysis prepared by Staff indicates that this contract will not provide ratepayer benefits under even the most favorable scenarios examined. Accordingly, there would be no basis to conclude that the proposed contract will reduce costs to ratepayers, and therefore there is no support for entering into this contract under Section 3210-C.

#### B. Utilities' Comments

The two utilities which would potentially sign as counter-parties submitted different comments. CMP raised points and issues for the Commission to examine that were not fully addressed in the term sheets in CMP's view. CMP neither supported nor opposed approval whereas Emera Maine supported approval of the Weaver Wind and Highland Wind term sheets based on positive economics for ratepayers but not the [REDACTED] proposal based on negative economics.

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<sup>5</sup> LEI has been engaged by the Commission to provide forecasts of future electricity prices.

CMP submitted comments on Weaver Wind on November 17, 2014 and on Highland Wind and [REDACTED] on December 5, 2014. In all of its comments, CMP stated that it did not object to the use of the term sheet approval process for selecting projects under 35-A M.R.S. 3210-C with the understanding that the Commission was not binding itself or the utilities to its terms until the point a complete contract was approved. CMP raised several points that were not addressed in any of the proposed term sheets and stated that any binding project approval should not occur until those outstanding issues were agreed to in a final contract approved by the Commission.

With regards to Weaver Wind, CMP stated the Commission should recognize the operational and price risks inherent with the proposed delivery point for the project in terms of both transmission constraints and the potential for local transmission or “wheeling” charges. CMP stated that the resulting contract should include an affirmative obligation for Weaver Wind to expend commercially reasonable efforts to obtain qualifying capacity credit in the FCM. CMP also raised concerns over the implications of market price fluctuations. CMP completed its own analysis of the project which determined that Weaver Wind would only provide positive benefits to ratepayers if market prices increase by 3% or more annually. Although CMP did not explicitly recommend the adoption or rejection of the term sheet, it stated that the proposed contract presents significant risks over a long period of time and should not be entered into unless significant financial benefits, such as price reduction or hedging benefits are reasonably certain to be obtained for customers.

Regarding the Highland Wind proposal, CMP raised similar concerns as those noted above as well as concerns about the lack of certainty as to the project’s delivery point and the “Allowable Curtailment” provision in the term sheet. As to the “Allowable Curtailment” provision specifically, CMP noted that the provision is an improper attempt to have ratepayers insulate Highland Wind from ISO-NE dispatch decisions or congestion constraints that would prohibit the facility from delivering energy to the market. Finally, CMP stated that the results of its analysis indicated that the Highland Wind project would provide positive financial benefits to ratepayers unless market prices decreased by 10% or more.

CMP commented that the [REDACTED] project would create additional stranded costs unless the market prices increased 7% or more annually over the term of the contract. CMP stated that, with the possibility that electricity prices will fall over time, there is a significant potential that [REDACTED] would result in a negative net present value over the term of the contract.

Finally, pursuant the enactment of “An Act to Ensure Equitable Support for Long-Term Energy Contracts”, P.L. 2014 Chapter 454, which requires all costs from long-term contracts to be allocated between CMP and EME based on kWh percentage, CMP suggested that rather than having both utilities responsible for administering a portion of a proposed purchase, the Commission allocate 100% of the purchase obligation to the utility in whose service territory the project will be located. Other than with respect to which utility is responsible for day-to-day contract administration issues,

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CMP states that there is no substantive effect of having either EME or CMP sign a particular long-term contract.

Unlike CMP's comments, EME's November 17, 2014 comments supported approval of the Weaver Wind term sheet. EME noted that, given that it is not possible to forecast market prices with a high degree of certainty, the pricing reflected in the proposed Weaver Wind terms sheet is appropriate given the difficulty predicting future market prices and natural gas prices in particular. EME therefore recommended the Commission approve these contracts as part of a portfolio approach to mitigating electricity price volatility using long term contracts. EME reiterated its recommendation from the previous long-term contracting procurement that:

"(o)ne way to mitigate the risk of major price movements is not to try and "time" the market, but rather to procure the desired portfolio of contracts over a period of time (vs all at once), and to stagger the terms of the contracts secured. In a bond portfolio that might be akin to having a mix of different terms which come due in different years."

See *Comments of Emera Maine in Response to Request for Proposals*, Docket No.2012-00504 (August 9, 2013) at 3. As part of an energy price volatility strategy, EME believes approving these contracts is appropriate.

EME submitted additional comments on the Highland Wind and [REDACTED] projects on December 9, 2014. These comments supported the contract with Highland Wind, as part of a diverse portfolio to help mitigate electricity prices over time. EME believes that the pricing set forth in the Highland Wind term sheet is generally consistent with other proposals recommended by Emera Maine in the above referenced comments. The pricing in this project (\$46.75/MWH +2.0%/year) generally falls within the range of the average yearly ISO-NE average annual HUB prices and Maine zonal marginal prices over the past 10 years. EME also requested the Commission examine the Allowable Curtailment provision in the Highland Wind term sheet more closely. EME did not support the [REDACTED] Project, stating that the pricing of [REDACTED] project was too high relative to market prices as well as other available projects to merit moving forward.

#### C. Reply Comments of Weaver Wind

Weaver Wind submitted reply comments on November 21, 2014 responding to several of the assertions in CMP's November 17<sup>th</sup> comments. Specifically, Weaver Wind stated that CMP's characterization of constraints in the transmission grid in the Downeast Maine region was not on point because the location of the proposed Weaver Wind interconnection is not "behind" the Keene Road constraint mentioned by CMP and that CMP's comments overstated the historic occurrence of curtailment events in the area. With respect to CMP's concern over "wheeling" charges, Weaver Wind noted that these would not apply because the project would connect directly to the ISO-New England (ISO-NE) pool transmission facility

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system. Weaver Wind also indicated that CMP had undervalued the project's capacity by not considering the potential for Capacity Performance Payments in the ISO-NE Forward Capacity Market (FCM).<sup>6</sup> Weaver Wind also criticized CMP's financial analysis in several respects, including failure to incorporate the winter peaking nature of the electricity market and lack of consideration for the value of market price suppression.

D. Reply Comments of Highland Wind

Highland Wind submitted reply comments on December 12, 2014 primarily focused on addressing concerns over the "Allowable Curtailment" provision in its proposal. First, Highland Wind clarified that the provisions allow the utility to avoid purchases up to the Allowable Curtailment amount when market prices are more favorable than the contract price. As such, the provision helps to mitigate some of the risk that the purchase price under the contract might be higher than market prices in the future.

Second, the Allowable Curtailment provision provides the seller certainty as to the minimum amount of energy that will be purchased. The mitigation of this risk that energy purchases may be lower than anticipated under the agreement allows Highland Wind to provide more attractive pricing than would otherwise be the case. Highland Wind asserts that CMP misconstrued the intent of the provision, and believes the provision is also likely to provide benefits to Maine customers.

V. **DISCUSSION AND DECISION**

We begin our analysis by determining whether a proposal satisfies the requirements of Section 3210-C, principally whether it presents a sufficient likelihood of ratepayer benefit through lowering electricity costs and providing a volatility hedge over the term of the contract. See 35-A M.R.S. §3210-C (2) & (3). We note our general agreement with the utilities that there is some risk to long-term contracts in that their economics depend on future projections of energy and capacity prices and, in the case of the proposed contracts, the energy pricing is sensitive to the differential between the node LMPs and the hub LMPs<sup>7</sup>. It is for this reason that we take into account both

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<sup>6</sup> For additional discussion of the revisions to the FCM see <http://isonewswire.com/updates/2014/1/22/spi-news-iso-ne-submits-proposal-to-strengthen-performance-i.html>

<sup>7</sup> Locational Marginal Pricing is a method used by ISO-NE to establish a price for energy purchases and sales at specific locations throughout the New England wholesale electricity market. Essentially it represents the cost of supplying an additional increment of load at a particular location. A nodal LMP is composed of electricity, congestion, and loss components that vary depending on the geographic location of the node in the region. In the wholesale market generators are paid the price of the LMP node where they connect to the grid. The hub is a collection of locations, in central Massachusetts, with a load-weighted price intended to represent an uncongested price for electric energy, facilitate trading, and enhance transparency and liquidity in the marketplace.

quantitative economic analyses (including sensitivity analyses), as well as more qualitative considerations such as volatility reduction and risk mitigation measures in each proposal.

The analysis of the likelihood of ratepayer benefits involves the comparison of proposed long-term contract prices with the future capacity and energy costs and, thus, involves long-term forecasts of future prices. Such forecasts are inherently uncertain and, accordingly, the Commission reviews each proposal under a range of possible future scenarios to determine the potential benefits and risks to ratepayers over a wide range of possible market futures for capacity and energy supply. The result is an analysis that allowed the Commission to conclude there is a substantial likelihood of ratepayer benefits that outweigh the risk based on the range of reasonably possible market conditions for capacity and energy costs and as explained below the contracts approved are significantly below expected market value.

We note that, with the approval of the Weaver Wind and Highland Wind projects, the total amount of long-term capacity under long-term contracts is approximately 10% of Maine's load assuming that all generation under long-term contracts will actually be developed—which may not be the case. Thus, our approval of the contracts for the Weaver Wind and Highland Wind projects represents a relatively small hedge against market price increases and volatility<sup>8</sup> and a relatively small risk to ratepayers. There is a price volatility reduction benefit to both of these contracts because they provide for stable energy pricing into the future regardless of market volatility of the capacity and energy markets for the terms of the contracts. We emphasize that these contracts will only result in ratepayer costs if in the future electricity prices that are significantly lower than expected which is unlikely given the general economic consensus projections that both regional and national electricity prices will gradually rise from current levels.

A. Award of Long-term Contract to the Weaver Wind Project

Weaver Wind is a 72.6 MW wind generating facility proposed to be developed in Hancock County in Emera Maine's service territory within the towns of Eastbrook and Osborn, Maine. The project as proposed comprises 22 3.3 MW turbines. Weaver Wind anticipates that commercial operation will begin before the end of 2016.

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<sup>8</sup> A recent analysis of an electricity generation portfolio representative of New England suggests price volatility reduction strategies favor increased renewables in the New England generation mix. See Rauch, Jason N, 2014. *Price and Risk Reduction Opportunities in the New England Electricity Generation Portfolio*, Electricity Journal, Volume 27, Issue 8, pp. 27-36. Thus, if there is any concern for price volatility, a generation portfolio should not be driven only by the lowest price generation if that generation has a history of volatile prices with unpredictable rises and falls, but should include more renewables to reduce the ratepayer risk of price volatility when those renewables exhibit stable and predictable prices.



The Weaver Wind proposal is structured as a long-term contract for the entire energy output and capacity value of the Weaver Wind Project. The contract is for a twenty-five year term beginning with the commercial operation of the facility. The bundled contract price in the first year of the contract is \$53.00/MWh. The contract price will increase by \$1.50/MWh in each subsequent contract year thereafter.

The contract attempts to limit the differential that could develop between the node LMP and the Maine zone LMP with a price differential recapture mechanism. In the event the average real time LMP at the project facility node is less than the average real-time LMP at the Maine Zone by more than 10% in any contract year, the contract price for the subsequent year shall be calculated as the difference between 90% of the prior year's average real-time LMP at the Maine Zone and the prior year's average real-time LMP at the project facility node; provided however, that this adjustment to the contract price shall not exceed \$5/MWh.

Weaver Wind will be required to use commercially reasonable efforts to qualify the facility in the ISO-NE FCM. All revenue associated with capacity transactions in the ISO-NE capacity market, including without limitation Capacity Base Payments and Capacity Performance Payments, as defined by ISO-NE, along with other revenue obtained by Weaver Wind for the capacity value of the facility, will be used to offset the energy prices under the contract. Weaver Wind will credit to the contract counterparty 100% of all net capacity revenue received, subject to a floor of \$200,000.

Upon considering the analysis criteria outlined above, we approve the Weaver Wind proposal. Weaver Wind satisfies the applicable statutory standards and policy goals outlined in section 3210-C(2) and, as a new renewable resource, is high under the prioritization criteria outlined in section 3210-C(4).<sup>9 10</sup> This project presents a significant likelihood of providing ratepayer benefits over the term of the contract that are significantly below expected market value as explained below. Based on Staff's analysis, this project provides benefits to ratepayers across a wide range of future scenarios. The scenarios assessed by staff range from a high carbon price scenarios to

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<sup>9</sup> Specifically, the Commission finds that both Weaver Wind and Highland Wind will increase the share of renewable energy as percentage of the total generation resources in the State, as well as, serving to reduce electric prices and price volatility for consumers and reducing greenhouse gas emissions. The Commission finds these contracts will also partially fulfill the State's renewable energy expansion policies, specifically the Maine Wind Energy Act, 35-A M.R.S. §3401 – 3404, and are consistent with the State's goals for greenhouse gas reduction and the regional greenhouse gas initiative as required by 35-A M.R.S. §§ 3210-C(3) - 3210-C(4).

<sup>10</sup> Under the ranking criteria provided in 35-A M.R.S. 3210-C (4)(A) both the Weaver and Highland projects are competitive and the lowest price when compared to other available offers for the same or similar contract terms and duration. The resource category of these projects falls under (B) the addition of renewable capacity resources, the second highest priority category.

low and high natural gas price scenarios. Of these scenarios, the RGGI pricing scenarios is a reasonable base case scenario since both Maine and the New England states participate in RGGI and thus the energy markets reflect this pricing.<sup>11</sup> Additionally, the project presents new renewable capacity resource located in Maine and would create no net emission of greenhouse gases. See 35-A M.R.S. § 3210-C(4).

We further conclude that the Weaver Wind project will have a “price suppression” effect. A price suppression effect occurs when a zero marginal cost resource (i.e., a resource that bids into the market at zero) displaces generation resources with greater marginal costs of production, thereby lowering the wholesale prices of energy. Because the Weaver Wind project will have a zero short-run marginal cost, it will provide a measurable price suppression effect. Staff’s analysis of the suppression and hedge benefits of this type of contract weighs strongly in favor of approval. The price suppression benefits and hedge turn base case benefits, which trend positive, to significantly positive in almost all cases. The Commission Staff estimates the present value of the hedge benefits at \$5-\$13 million and of the market suppression benefits at \$12 million. These additional benefits raise the estimated \$3-\$17 million present value benefit of the contract products, as calculated using our base case market forecast provided by LEI, to the range of \$17-\$39 million. Thus, the quantitative benefits calculated by staff on the whole provide pricing that is significantly below expected market value as set forth in Ch. 316 of the Commissioner’s rules.

Irrespective of the likelihood of the project qualifying in the Forward Capacity Market (FCM), it will receive Capacity Performance Payments and a minimum level of capacity value from Weaver Wind is guaranteed to Maine ratepayers. The capacity floor benefit to ratepayers is set to at least \$200,000 annually or \$5 million minimum capacity payments over the 25 year contract term. The project is expected to receive Capacity Performance Payments in excess of this minimum floor level. Staff examined this in detail to arrive at quantitative estimates of these capacity performance

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<sup>11</sup> The Commission does not adopt the IHS CERA projections because they are not consistent with the Commission’s expert London Economics (LEI) which the Commission retained and worked extensively with in reviewing these proposals. Nor are the IHS CERA projections publicly available and they are inconsistent with published U.S. Energy Information Agency (EIA) projections. In the Commission’s expertise and general knowledge, the IHS CERA projections represent the most optimistic view of low natural gas and electricity prices among major energy experts. Further, these IHS CERA projections are a blackbox – staff attempted to and has not been able to determine IHS’s methodology and thus we do not know why or how IHS CERA produces prices for natural gas and electricity that are so much lower than other energy forecasts. Because LEI’s and EIA’s projections are based on extensive modelling of regional, national, and international gas and energy markets, and whose modelling methodologies are more transparent to the Commission, and in the case of the U.S. Energy Information Agency, transparent to the public, the Commission does not find those IHS CERA projections to be the most credible future predictions for purposes of this proceeding.

payments, having a gross total present value in the range of roughly \$2.5-\$16.8 million, depending upon the number scarcity event hours that may occur. Notably, the staff review of Capacity Performance Payments is positive by millions of dollars; it varies on how positive but not whether it will be positive or negative.<sup>12</sup>

The capacity value would further increase if the project qualifies and receives capacity revenue in the FCM. Because qualified capacity is difficult to predict and that may or may not happen, staff did not arrive at a quantitative value for potential FCM payments but qualitatively we know on balance qualified wind generation projections receive greater financial benefit from FCM qualification than not – that is of course why pursuing FCM qualification is beneficial and why we place an affirmative obligation on the project developer to seek such qualification. In short, the value of these Capacity Performance Payments or FCM payments could be significant, will likely exceed the floor amount of \$5 million over the contract life based on staff detailed review. Accordingly, the Commission accepts CMP's suggestion to obligate Weaver Wind to reasonable commercial efforts to qualify the project for the FCM to receive capacity payments in excess of the Capacity Performance Payments which would further enhance the ratepayer benefits that may flow under this contract.

Comments received from OPA and EME were supportive of the adoption of the Weaver Wind proposal because of likely ratepayer economic benefits and the hedge value against future price increases. CMP's comments, while noted, do not rise to the level where they would dissuade approval. For example, the interconnection is not behind the Keene Road export constraint. Moreover data supplied by the developer shows that a nearby wind project (Bull Hill), that shares the same interconnection point, has experienced curtailment only 1% of the time. In addition, CMP's concern over wheeling charges is not applicable as this project will connect directly to an ISO-NE PTF node. Finally, CMP fails to take into account the value of Capacity Performance Payments, and the value of resources that produce energy during the winter peak when electricity prices have been highest in recent years. According to the Staff analysis, Weaver Wind will produce approximately one-third (32%) of its energy during the high price winter months of December, January, and February (the hourly generation profile produced from the developer's meteorological data suggests the project will generate over 60 GWh in these winter months). More energy is produced proportionately in the higher priced months – 32 percent of the wind energy benefits ratepayers during the coldest and highest priced 25 percent of the year. Thus, this contract will avoid higher priced purchases of electricity during these winter months at attractive prices for energy and capacity.

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<sup>12</sup> It is inaccurate to say that because the Commission does not know the exact occurrence of scarcity hours (it is impossible to predict the future with exact precision) that the Commission is not able to calculate a range of values for ratepayers; that calculation is possible and done here. The Staff's careful review indicates the ratepayer value will be \$2.5 to \$16.8 million depending on the number and occurrence of scarcity event hours.

Further, the price differential recapture mechanism effectively mitigates the risk of price differentials greater than those modelled which is otherwise a risk if the modelled assumptions on that differential are exceeded. This mechanism is an innovative way to reduce ratepayer risks that the modelled assumptions are inconsistent with historical experience and the Staff's projections based historic differentials.

In sum, the present value of the direct net benefits to ratepayers from the contract is in the range of \$6 million in our base case. Six million dollars of present value gain to Maine ratepayers is a significant ratepayer reduction from expected energy market values over the 25 year term of the contract. Over a variety of future energy scenarios, the broader range that includes less likely cases of net present value benefits spans from a high benefit of \$35 million to a low benefit of \$3 million. We find the range of possible economic benefits to be significant and combined with the stable pricing terms offered for 25 years to outweigh the inherent uncertainty in making future market predictions. As discussed above, additional benefits exist in the form of market suppression and hedge value.

As stated above, section 3210-C of Title 35-A specifies that the long-term contracts should be no more than 10 years, unless the Commission finds that a longer term to be prudent. The Commission understands this provision as a recognition that the longer the term of a contract the greater the risk to ratepayers. The Commission has considered the risk of a contract greater than 10 years and concludes that the twenty-five year Weaver project contract is a prudent transaction. The Commission makes this finding in light of the benefits that would flow to ratepayers between years 10 and 25 and finds those net ratepayer benefits to be likely be substantial.

B. Award of Long-term Contract to the Highland Wind Project

The Highland Wind Project is a 44 megawatt (MW) wind facility being developed in Somerset County near Bingham, ME. The project is located in CMP's service territory. The Project will use 22 wind turbines configured with 94 meter towers and 116 meter rotors. Highland has been in development since 2007 and is expected to achieve a commercial operation date of October 2017.

The proposal is structured as the sale of energy on a physical basis and a transaction for capacity on a financial basis. The contract is for a twenty-year term beginning with the commercial operation of the facility. The bundled contract price in the first year of the contract is \$46.75/MWh. The contract price will escalate at 2.00% per year in each contract year thereafter.

The Commission understands that "capacity revenue" shall mean all revenue associated with capacity transactions in the ISO-NE capacity market, including without limitation, Capacity Base Payments and Capacity Performance Payments as defined by the ISO-NE Tariff and ISO-NE Market Rules, along with any other revenue, such as that from the ISO-NE FCM, obtained by Highland Wind each month for the value of the project's Capacity. Capacity Revenue calculations shall be net of any charge(s) or adjustment(s) as may exist from time to time and as may be required by or imposed by ISO-NE for participation in the ISO-NE Capacity Market.

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With respect to the capacity revenue received, fifty percent of the capacity revenue shall be credited to the buyer, with remaining revenue retained by Highland Wind. Highland Wind retains all obligations with respect to the facility capacity in the ISO-NE market and commits to using commercially reasonable efforts to qualify in the FCM, including submitting a fully documented request to justify submitting offers in the Forward Capacity Auction.

The Allowable Curtailment provision requires the buyer to purchase all of the facility's annual output with the exception of 5,519 MWh annually (3% of average annual generation) to be determined at buyer's discretion.

Based on Staff's analysis, which we adopt, the Highland Wind Project would provide significant ratepayer benefits under a broad range of market price scenarios. Staff estimates a \$15-\$21 million present value benefit of the contract products, as calculated using our base case market forecast provided by LEI, depending upon the number scarcity event hours that may occur. In addition, the price suppression (estimated at \$11 million) and hedging (estimated at \$4-\$10 million) benefits would, as discussed above, substantially serve to increase the value to ratepayers.

In sum, the present value of the direct net benefits to ratepayers from the contract is in the range of \$17 million in our base case. Seventeen million dollars of present value gain to Maine ratepayers is a significant ratepayer reduction from expected energy market values over the 20 year term of the contract. Over a variety of future energy scenarios, the broader range that includes less likely cases of net benefits spans from a high benefit of \$34 million to a low ratepayer benefit of \$15 million. We find the range of possible economic benefits to be significant and combined with the stable pricing terms offered for 20 years to outweigh the inherent uncertainty in making future market predictions.

This above analysis is depends on resolving the "Allowable Curtailment" provision. The Commission has some concerns about this "Allowable Curtailment" provision, and directs Staff to work with Highland Wind and the utilities to clarify this provision and ensure that adequate protections are in place such that the provision would not erode the ratepayer value of the contract.

We note that commenters raised concerns about the dependency of this project on the extension of the federal Production Tax Credit (PTC) program. The risk of PTC extension, however, remains with the project and ratepayers will have no risk exposure if the PTC is not extended.

Finally, as with the Weaver project, the Commission has considered the risk of a contract greater than 10 years and concludes that the twenty year Highland project contract is a prudent transaction. The Commission makes this finding in light of the benefits that would flow to ratepayers between years 10 and 20 and finds those net ratepayer benefits to be likely be substantial.

C. [REDACTED] Project

Based on Staff's analysis, the [REDACTED] Project proposal would not provide ratepayer with net benefits under most of the scenarios analyzed. Ratepayers would likely pay more in costs than would be realized in capacity, energy and other benefits under this proposed term sheet. Accordingly, the Commission rejects the proposed term sheet for the [REDACTED] Project.

Accordingly, we

## ORDER

1. That one or more of Maine's investor-owned transmission and distribution utilities enter into long-term contract(s) for capacity and energy with Weaver Wind LLC, for the output of Weaver Wind;
2. That one or more of Maine's investor-owned transmission and distribution utilities enter into long-term contract(s) for capacity and energy with NextEra Energy Resources LLC, for the output of Highland Wind;
3. Delegate to Staff the negotiation and development of the long-term contracts consistent with the approved term sheets and this Order;
4. That the transmission and distribution utility/utilities actively participate in good faith in the long-term contracting process with the project proponents and Staff; and,
5. That, upon completion of such negotiations, the long-term contracts be filed in this Docket for subsequent deliberations by the Commission to determine that the contracts are consistent with the term sheets as approved and clarified herein.

Dated at Hallowell, Maine, this 6<sup>th</sup> day of February 2015.

BY ORDER OF THE COMMISSION

/s/Harry Lanphear

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Harry Lanphear  
Administrative Director

COMMISSIONER VOTING FOR: Welch  
Littell  
COMMISSIONERS DISSENTING: Vannoy

**REDACTED**

## Dissent of Chairman Vannoy

I respectfully dissent.

I would decline to enter into any of the proposed long term contracts as put forward by the bidders to this Request for Proposals.

Clearly the Commission has the statutory authority, pursuant to 35-A M.R.S. § 3210-C, to approve long term contracts. However, as I have stated on previous occasions, the statute does not require that we approve any particular long term contract. In fact with respect to the long term contracts before us the statutory authority for approval is based primarily on a Commission finding that the contract will reduce electric prices<sup>13</sup>. In my view, it is paramount that we exercise our authority to accept, or reject, a long term contract with a degree of care that is guided not only by the overarching policies articulated in section 3210-C(2), but also by those which are embedded in other provisions of the statute.

For instance, section 3210(C)(5) of the statute expresses a strong policy preference with respect to the duration of a long term contract, stating that a contract “may not be for more than 10 years, unless the commission finds a contract for a longer term to be prudent.” The use of the term “prudent” in the statute provides a singularly strong indication as to how the Legislature intended the Commission to exercise its long term contracting authority. This is so because the term “prudent” has particular resonance for all utility regulators. Specifically, it is the standard to which we hold the expert managers of utilities when they make investment or operational decisions that will affect the rates that customers will pay for utility service. Where a particular decision is found to have been imprudent, the utility will be denied recovery, through rates, of the costs associated with that decision. The consequence of imprudent behavior is that the firm’s shareholders will bear the full cost of management’s imprudence.

The purpose of the “prudency” standard is, of course, to protect ratepayers. The Maine Commission’s track record with respect to long-term contracting is unquestionably open to debate. The fact is that Maine consumers are still paying, in the form of stranded costs embedded in their electricity rates, a substantial price for prior Commission decisions approving long-term contracts that did not, in the long-term, achieve the sought-after benefits.

Any prudent review of a proposed long term contract necessarily requires an analysis of whether the proposed contracts will lower consumer costs.

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<sup>13</sup> See Commissioner Vannoy’s dissent in the Commission’s previous long term contract proceeding (Docket 2012-504).

In conducting this analysis, I am particularly guided by the Commission's 1996 report to the Legislature, prepared in connection with the restructuring of Maine's electricity market, in which we stated that "[w]here viable markets exist, market mechanisms should be preferred over regulation and the risk of business decisions should fall on investors rather than consumers." Restructuring Report, Docket 95-462 (Dec 31, 1996). Given this overriding policy goal of restructuring, the Commission's long term contracting authority should be approached as a backstop to meet the policy goals of M.R.S. § 3210-C.2, to be used where market mechanisms are found insufficient to lower customer costs or properly assign risk. I find that each of the proposed contracts before us are not clearly likely to lower customers costs, and none are addressed to rectifying a demonstrated insufficiency of the restructured market to place the risk of business decisions on investors. To approve these contracts would, in my view, be an imprudent exercise of our long term contracting authority.

I address each of the contracts, in turn, albeit in reverse order.

#### [REDACTED] Project

This proposed contract is unlikely to lower consumer costs in either the short-term or the long-term. Therefore I believe it would be imprudent to enter into the contract.

#### Weaver Wind Project

Staff analyzed this contract under a number of confidential, forecast scenarios developed by its consultant, London Economics, each of which are either predicated upon, or derivative of, the EIA forecasting data for future natural gas prices. These various scenarios present future prices that generally follow the same long-term curve. Each scenario of the London Economics analysis projects long-term contract benefits. With the exception of scenario #1, which is a high cost of carbon dioxide scenario, the benefits to consumers are not realized until 2021. Moreover, those modeled benefits that start accruing in 2021 are heavily dependent on prospective payments from a yet-to-be implemented ISO New England administered, pay-for-performance incentive mechanism of the capacity market. Obviously, we have no experience regarding how this mechanism will actually function. Further, the London Economics analysis depends on the assumption, which may or may not prove valid, that the intermittent generator will be functioning during a scarcity event and will therefore receive an incentive payment under the new regime. However, if this assumption ultimately proves incorrect, the energy term of the proposed contract will cause consumers to pay premiums on the wholesale market price until 2029.



An alternative confidential forecast for natural gas in New England, prepared by IHS CERA, predicts short-term pricing impacts during the winter due to limited pipeline capacity, followed by substantial reductions in the natural gas basis between Boston City Gate and Henry Hub. The prediction of future reductions in gas prices likely reflect an assumption that there will be new pipeline development into New England coupled with a negative pricing point at Marcellus relative to Henry Hub. What this means is that during the summer months, the Boston City Gate basis is negative to Henry Hub. Under this gas future forecast, the Weaver Wind Project contract would result in significant above-market prices for Maine ratepayers throughout the duration of the contract.

### Highland Wind Project

This contract is much more likely to break even for consumers under the London Economics forecasting. The base price and relatively modest escalator result in a generally neutral price curve over the 20 year term of the contract. Base Cases 1-3 are positive in all years. In Base Case 4, the project will be negative initially, with benefits beginning in 2022 and an energy value that turns positive in 2024.

However, under the alternative gas future forecast (IHS CERA), this project would likely begin costing consumers roughly \$1 Million a year in 2019 – a cost that would grow to roughly \$2 Million a year by 2022, followed by varying costs between \$1.5-2 million per year through the end of the 20 year term.

Based on the divergence of these various forecasts, I am not persuaded that the benefits to consumers will actually materialize.

### Conclusion:

I believe that we are in what should be a temporary cycle of high electricity prices that is dependent on regional policy choices. There is currently a disconnection between NE electricity prices and natural gas prices in nearby gas-producing regions (mainly the Marcellus shale region). As this disconnection is solvable, the future should see lower electricity prices.

Each of the proposed long-term contracts offer short-term, above-market prices with promised benefits in the out- years based on projections of future fuel costs. In my view, now is not the time to be entering such contracts. By approving long-term contracts with cost curves that have near-term costs, there will be higher stranded costs in the near-term, and ultimately higher costs to consumers in the long-term. In addition, the ISO New England has recently approved market changes which allow for significant negative pricing in the wholesale energy market.

It is unclear how this will affect specific pricing nodes. It is likely that generators with long-term contracts which clear on remote nodes will have incentives to bid negative at times in order to be dispatched. This effect is difficult to quantify and because of the new rule there is not adequate historic market data to make future predictions of what these effects will be on the ability to obtain value for the proposed contracts. The term sheets in question do not adequately protect ratepayers from these effects.

Therefore, I would decline from entering into any of the long-term contracts. The proposed duration of the contracts raises prudence questions of which the statute requires that we consider. The costs may very well prove to be above-market depending on one's view of gas futures. In essence, we have two approaches to gas futures, an EIA based forecast put forward by London Economics, and an IHS CERA based forecast. The two are widely divergent. Yet, under each forecast, the proposed contracts yield near-term customer costs. Precisely how long these costs are projected to persist depends on the particular forecast. Under the London Economics analysis they eventually turn positive while under the IHS CERA gas futures they remain a cost to consumers. I simply do not believe that it is prudent to obligate ratepayers to near-term costs in the current market environment.

Instead, it would be wise for the Commission to issue an RFP for existing resources to see if any generators are willing to enter into intermediate length contracts that might reverse the typical cost curve and provide some near-term benefit with some out-year costs. While such an RFP might not produce a positive response in the market, it is worth exploring and gauging the market's interest in such an arrangement. In this way, perhaps, we might find that the market is willing to supply an intermediate-term contract in which the cost curve acts as a balance to some of the unfortunate long-term contracts that the Commission has approved over the past several years.

## 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.