STATE OF MAINE

SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT
LAW DOCKET NO. PUC-24-322

SNAKEROOT SOLAR, LLC

Appellants

v.

PUBLIC UTILITIES COMMISSION

Appellees

On Appeal From the Order of the
Public Utilities Commission

Brief of Appellants Snakeroot Solar, LLC
REDACTED

Jonathan M. Dunitz, Bar No. 007752
Hans C. Eysenbach, Bar No. 006015
Attorneys for Appellants Snakeroot Solar, LLC

VERRILL DANA, LLP
One Portland Square
Portland, ME 04101
(207) 774-4000

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I. INTRODUCTION

This appeal arises out of the Maine Public Utilities Commission's (the "Commission") denial of Snakeroot Solar, LLC's ("Snakeroot") Petition for a Good Cause Exemption that would have allowed it to participate in Maine's Net Energy Billing program. The good cause exemption was created by the legislature as a safe harbor for entities like Snakeroot, whose investment in Maine renewable energy projects were put at risk of ineligibility by program amendments enacted by the legislature.

More specifically, in 2019 the legislature expanded the Net Energy Billing program to allow projects between 2 and 5 megawatts (MW) to participate in the program. In 2021, the legislature enacted retroactive eligibility deadlines and deadlines that expired shortly after the 2021 statute's effective date. As a result, projects like Snakeroot, which had devoted significant time, money, and other resources into solar projects in Maine and the Maine economy, in good faith and in reliance on the 2019 expansion, risked forfeiting that investment for reasons beyond their control. To attenuate that risk, the legislature included the good cause exemption in the 2021 legislation. This provision enables projects that do not meet the new deadlines to participate in the Net Energy Billing program if the statutory deadlines were missed due to external delays outside of the projects control.

In this matter, Snakeroot met all of the requirements – both retroactive and near-term – save one. Due to circumstances well beyond its control, Snakeroot will not be able to reach commercial operation by the December 31, 2024 deadline that was imposed in the 2021 amendments to the Net Energy Billing legislation. As a result, it filed a good cause petition with the Commission seeking an exemption of the deadline. In its decision denying Snakeroot's petition, the Commission disregarded the plain meaning of the unambiguous good cause provision of the statute, created a foreseeability standard that is not part of the good cause paradigm, and issued an Order that is not based on the record evidence. Given these errors, Snakeroot timely appealed the denial of its good cause petition to this Court.

II. STATEMENT OF FACTS AND PROCEDURAL HISTORY

A. Facts

1. Snakeroot enters the NEB Program

The Legislature enacted the current iteration of the Net Energy Billing ("NEB") program in 2019 (the "2019 NEB Legislation"). [*P.L. 2019, ch. 16, 478 (effective Sept. 19, 2019)*]. It did so as part of Maine's commitment to achieve 100% sourcing of electric supply from renewable energy generators by 2050. The

2019 legislation enabled solar projects of up to 5 MW to participate in the NEB program.[1]

Snakeroot, then under Cianbro's ownership, initiated development of the project that eventually became Snakeroot shortly after the 2019 NEB Legislation became effective. [Appendix at 28 (hereinafter A. at __)].[2] In February 2020, Snakeroot initiated the Project at its current location and size. [*Id*]. Snakeroot submitted an interconnection request on May 26, 2020, which Central Maine Power Company ("CMP") accepted on May 28, 2020, assigning the Project the identifying number PRJ # 473. [*Id.*]. The Project signed a system impact study agreement on July 9, 2020, and two months later, on September 18, 2020, the Project and CMP executed an Interconnection Agreement. [*Id.*]. Snakeroot was assigned queue position one at its substation of interconnection, meaning that it was the first project in line for interconnection at that particular CMP substation. [A. at 16].

2. Snakeroot has satisfied all NEB program eligibility criteria, including those enacted after it entered the queue, except the commercial operation deadline of December 31, 2024

[1] "Net energy billing is a 'renewable energy incentive program that is intended to encourage electricity generation from renewable resources.'" *Industrial Energy Cons. Grp.*, 2024 ME 60 ¶ 11, n. 1 320 A.3d 437 (quoting *Conservation L. Found. v. Pub. Utils. Comm'n,* 2018 ME 120, ¶ 2, 192 A.3d 596).

[2] Snakeroot's Good Cause Exemption Petition was adopted as Snakeroot's sworn testimony pursuant to an affidavit filed on October 10, 2023. [A. at 6, Item No. 10].

Seventeen months *after* Snakeroot commenced the interconnection process, the Legislature added several new eligibility criteria for NEB projects between 2 and 5 MW ("2021 NEB Statute"). *P.L. 2021, ch. 107, 307 (amending 35-A M.R.S. §§ 3209-A, 3209-B effective Oct. 18, 2021)*. This legislation added a number of new eligibility requirements, including the Commercial Operation Date (COD) deadline that is at issue here. *Id.*

In addition to the COD deadline, the 2021 NEB Statute set deadlines for: (i) a fully executed Interconnection Agreement; (ii) receipt of all local non-ministerial permits; and (iii) submission of all required Maine Department of Environmental Protection (DEP) permit. *Id.* Snakeroot met each of those requirements and executed its Interconnection Agreement in compliance with the December 31, 2020, grandfathering deadline. [A. at 16; A. 32, n. 17]. Thus, Snakeroot met all the NEB eligibility criteria, with the exception of the December 31, 2024 COD Deadline. [A. at 16; A. 32, n. 17]

3. CMP elected a cluster study approach to supplement initial system impact studies, which caused substantial delay in the Snakeroot's expected interconnection timeline.

A cluster study is a discretionary interconnection impact study implemented by CMP, according to the Independent System Operator-New England (ISO-NE) Transmission, Markets, and Services Tariff ("ISO-NE Tarriff"). [*ISO-NE Tariff*

Section II Open Access Transmission Tariff ("OATT") at § II.19.6].[3] The Commission's interconnection rules do not mention clustered interconnection impact studies as part of the process in Maine. [A. at 46-79]. However, during the pendency of Cluster 6, CMP sought and received the Commission's approval of a new CMP tariff establishing a formal process for cluster studies of proposed generation facilities that typically include at least 20 MW of interconnecting generation facilities. [*CMP Terms and Conditions, Section 60 Generator Interconnection Transmission System Impact Studies (effective May 20, 2022)*].[4] Until the enactment of the CMP cluster study tariff, CMP had discretion on whether or how to use a cluster study to assesses compliance with the ISO-NE requirement of no adverse impact to the reliability of the transmission and distribution system ("I.3.9 Determination"). The I.3.9 Determination is a prerequisite for all Level 4 interconnecting generators above 1 MW. OATT at § I.3.9.

Here, the earliest that Snakeroot could have received notice from CMP that it would elect a cluster study approach for Cluster 6 was June 2020, which was after the Project had secured its queue position. [*See Dynamic Energy Solutions*

[3] The OATT can be accessed through the ISO-NE webpage (Open Access Transmission Tariff (OATT)).

[4] Although not applicable to cluster 6 because it was approved after cluster 6 commenced, the CMP tariff is notable because it states that CMP "will make its best efforts" to complete the cluster study process within 305 business days, which is roughly 15 months.

Response to ODR-001-001 (A. at 008)*; Syncarpha Capital LLC Response to ODR-002-001* (*Id.*)]. CMP's first Cluster 6 Study schedule, dated June 23, 2020, lacked any estimated date for completion of the study. [*Dynamic Energy Solutions Response to ODR-001-001* (A. at 008)]. In a July 2020 version of the Cluster 6 schedule, CMP provided the first projected completion date of March 2021. [*Id*.]. Despite closing the scope of projects under study on February 1, 2021, CMP did not commence its cluster 6 study and analysis until more than four months later.

Cluster 6's study was delayed because in the spring of 2021, CMP was dealing with substation overvoltage issues for which it did not properly account in many distributed generation projects' initial system impact studies. The resulting overvoltage re-studies delayed the actual start of the study of Cluster 6 by over four months. [*See* A. 005, item No. 27 (*Testimony of MREA and CCSA at 6-8*)]. In fact, as evidenced by CMP's response to information requests in the proceeding below, it did not actually begin studying cluster 6 until well after its February 1, 2021, closure date. [A. 005, item No. 26 (*CMP Response to Request for Information (Nov. 3, 2023))*]. The Project then remained under the cluster 6 Study for more than 640 business days, approximately two and one-half years. [A. at 28-29].

For the years Snakeroot was in the cluster study, it could not advance through the interconnection process even though it had a fully executed

Interconnection Agreement [A. at 29]. The excessive length of time required for cluster 6's study could not have been predicted or controlled by Snakeroot. During this process, ISO-NE made numerous requests for additional studies, including, but not limited to, PSCAD, Steady State, Distributed Generation, and Mid-day Minimum Analyses, additional analyses which ISO-NE had not required of prior cluster studies by CMP. [*Id*.]. The delays caused by these successive changes in requirements imposed by ISO-NE were not and could not be within the control of Snakeroot. [*Id*.].

Snakeroot and the remaining projects in Cluster 6 were finally reviewed and approved by the ISO-NE Reliability Committee on August 31, 2023. In other words, from the closure of the study until the required approval was obtained, the cluster 6 study took two years and seven months. [A. at 029]. Thus, it was not until the August 31, 2023 ISO-NE approval of the impact study and upgrade plan that Snakeroot's interconnection upgrade equipment and design requirements were finally cemented. [*Id*.]. Before then, CMP could not begin the necessary upgrades and Snakeroot could not finalize designs and equipment procurement for its project, let alone start substantial construction on the facility. [*Id*.].

Absent the years-long cluster study process, Snakeroot's COD would likely would have occurred in 2023. This is based on an expedited twelve- (12) to fifteen- (15) month timeline for design, procurement, and construction of the Project

facility, and a two-year window for completion of CMP's system upgrades. [A. at 30]. As the first project in the substation queue, the facility construction and upgrade construction would, absent the cluster study, have commenced shortly after the interconnection agreement's execution on September 18, 2020. Moreover, as the first in queue in September of 2020, Snakeroot could reasonably foresee that it would be interconnected and reach its COD by December 31, 2024. Snakeroot's belief that it could interconnect within four years is consistent with the average interconnection timelines in other states, which have interconnection timelines of 2-4 years across all projects (four years being a "long period of study"), *regardless of substation queue position*, and irrespective of whether cluster studies are used in those states or not. [A. 005, item No. 27 (*Testimony of MREA and CCSA at 3*)]. Thus, Snakeroot would have met that COD deadline but for the repeatedly extended cluster study timeline.

Between the date of its interconnection request and its currently scheduled COD in late 2025, Snakeroot will be forced to undergo nearly six years of interconnection study and upgrade construction. This amount of time well exceeds the reasonably expected and average range of interconnection times for a facility of this size, considering both other similarly situated Level 4 projects in Maine and average interconnection timelines in other states. As Snakeroot met all of its

deadlines and diligently pushed this project forward, the delays to its COD are external delays beyond the control of Snakeroot.

In short, the Commission erred by denying Snakeroot's good cause petition based upon the view that there were no delays to the interconnection process for this project.

B. Procedural History

As permitted by 35-A M.R.S. 3209-A, Snakeroot filed a Petition with the Maine Public Utilities Commission (PUC) on September 8, 2023, requesting a good cause exemption from the December 31, 2024, COD Deadline.[5] [A. at 006, Item No. 3]. The PUC Hearing Examiners ("Examiners") filed a Notice of Proceeding and Scheduling Order in the docket on September 20, 2023, setting deadlines for intervention and scheduling a Case Conference for October 3, 2023. [A. at 006, Item No. 5]. Timely petitions to intervene were filed by the Office of the Public Advocate ("OPA") and jointly by the Maine Renewable Energy Association ("MREA") and Coalition for Community Solar Access ("CCSA"), both of which were granted without objection. [A. at 006, Item Nos. 4, 6, and 8].

A case conference attended by representatives of all Petitioners, the OPA, MREA, CCSA, and CMP was held on October 3, 2023. During the conference, the

[5] In addition to Snakeroot, Petitions for Good Cause Exemptions were filed by Pittsfield Solar I, LLC, Corinna Solar I, LLC, Piscataquis Valley Solar, LLC, Guildford High Street Solar, LLC and USS Blaine Solar, LLC (collectively, the "Petitioners") [A. at 006, Item 1].

Petitioning Parties indicated that the filed petitions, along with supporting documentation would serve as their pre-filed testimony in the proceeding. [A. at 005, Item No. 13 (transcript of October 13, 2023 conference)]. The Examiners then issued a Procedural Order setting October 10, 2023 as the deadline to file affidavits signed by the person or persons responsible for the information contained in the petition. [A. at 006, Item No. 8]. Snakeroot timely filed the requested affidavits. [A. at 006, Item No. 10].

The October 10, 2023 Procedural Order also scheduled a Technical Conference for October 19, 2023. [A. at 006, Item No. 8]. During the October 19 Technical Conference, the Petitioners including Snakeroot answered, under oath, the questions propounded by the Examiners, the OPA and others. [A. at 005, Item No. 17 (technical conference transcript)]. Following the October 19, 2023, Technical Conference, the Commission issued a Procedural Order setting November 3, 2023, as the deadline for intervenors to file testimony, and November 17, 2023, as the deadline for data requests regarding intervenor testimony. [A. at 005, Item No. 14].

In a December 13, 2023 Procedural Order, the Hearing Examiners indicated their belief that the record was complete and gave the parties until December 20, 2023 to present additional evidence or request a hearing. [A. at 004, Item No. 36]. Pursuant to the Commission's Procedural Order dated December 13, 2023,

Snakeroot filed a letter in the docket below stating its agreement with Staff that the record was complete and ready for briefing. [A. at 004, Item No. 38]. On December 28, 2023, Commission Staff issued a Scheduling Order for filing of initial briefs on January 12, 2024, and replies on January 26, 2024. [A. at 004, Item No. 41].

Snakeroot timely filed its initial brief and reply brief on January 12, 2024 and January 26, 2024, respectively. [A. at 004, Item No. 44; A. at 003, Item No. 53]. Via a February 16, 2024 Procedural Order, the Examiners reopened the evidentiary record and, on that same date, propounded additional requests for information on the Petitioners and CMP. [A. at 3, Item Nos. 57 and 58]. By Procedural Order dated March 13, 2024, the Examiners acknowledged the receipt of responses to the additional requests by the Petitioners and CMP, canceled a tentatively schedule technical conference, and indicated that the Examiners would continue to move toward a recommended decision. [A. at 002, Item Nos. 75 and 76].[6]

On April 22, 2024, the Examiners issued an Examiners' Report in which they recommended that all of the good cause petitions be denied, including that of

[6] Although not a subject of this appeal, in the March 13, 2024 Procedural Order, the Examiners noted that they were in receipt of the Industrial Energy Consumers Group's (IECG) late-filed petition to intervene, the objections of the petitioners, and IECG's reply, which were forwarded to the Commission for consideration. On April 29, 2024, the Commission denied IECG's petition to intervene as untimely. [A. at 02, Item No. 78].

Snakeroot. [A. at 002, Item 77]. Parties were permitted to file exceptions to the Examiners' Report by May 12, 2024. Snakeroot timely filed its exceptions to the Examiners' Report. [A. at 002, Item No. 84]. Thereafter, on June 24, 2024, the Commission issued its Order denying all of the good cause exemption petitions, including Snakeroot's petition. [A. at 002, Item No. 86]. Snakeroot timely filed a Notice of Appeal of the Order on July 15, 2024.

III. STATEMENT OF ISSUE FOR REVIEW

A. The Commission's Denial of Good Cause Relief is based upon an erroneous interpretation of the unambiguous phrase "external delays outside of [Snakeroot]'s Control."

B. The Commission's Ruling is unsupported by the record evidence and is an abuse of its discretion.

IV. SUMMARY OF ARGUMENT

This appeal is based upon two overarching issues. First, in its Order the Commission disregarded the plain language of the applicable statute. The language at issue is a good cause exemption that allows an entity, such as Snakeroot, to participate in the NEB program if an external delay outside of its control results in it missing a statutory deadline. Instead of applying the plain language of the statute, the Commission applied a foreseeability test that is not found in the good cause provision of the statute. Moreover, in applying the foreseeability test, the Commission determined what was foreseeable at the time of the delay, rather than

whether the delay was foreseeable at the time that Snakeroot entered the queue. As a result, the Commission's Order essentially reads the word "delay" out of the statute by holding that Snakeroot should have been aware in 2020 of the circumstances in which it would find itself in 2024. However, in 2020 none of the delays faced by Snakeroot, the first project in the relevant substation's queue, were foreseeable because multi-year cluster studies, lengthy procurement and supply chain lags, and other delays were not then part of the process. On this issue, the Court need not defer to the Commission's interpretation of the unambiguous statute because that deference yields to the plain language of an unambiguous statute. Based upon the Commission's misinterpretation of the statute, its Order should be vacated and the matter remanded.

Second, the Commission's Order is unsupported by the evidence and is an abuse of discretion. In its Order, the Commission found that the cluster study at issue does not constitute a delay. If, as the evidence shows, the cluster study suffered from delays that were beyond Snakeroot's control, it has met the standard for good cause relief. Here, there was ample evidence that this cluster study was unlike the prior studies conducted by CMP, including additional testing and analysis that was not previously required. As such, there were delays outside of Snakeroot's control.

Moreover, the Commission erred by finding that the cluster 6 study missed the benchmark length of cluster studies by only 2-3 months. In this regard, the Commission incorrectly established a 2-year benchmark for cluster studies because the evidence supports a benchmark of 1.44 years. As such, cluster 6, which took 2.58 years, was more than one year over the benchmark. Even with a 2-year benchmark, the Commission's Order is unsupported by the evidence because cluster 6 took almost 31 months, not the 26 to 27 months assumed by the Commission. Given the delays in the cluster study, the incorrect benchmark, and the apparent assumption that the cluster study took 26-27 months rather than 31 months, the Commission's Order is not supported by the record evidence.

Finally, the Commission abused its discretion by applying an arbitrary standard. The Commission has granted petitions with similar facts to those at issue for Snakeroot. By applying seemingly different standards to similar facts, the Commission abused its discretion when it denied Snakeroot's petition.

For these reasons, the Order of the Commission should be vacated and the matter remanded to the PUC.

V. ARGUMENT

A. Standard of Review

It is reversible error for the Commission to issue a ruling that is irrational, unsupported by the record evidence, or in violation of an unambiguous statutory mandate. *See Industrial Energy Cons. Grp. v. Me. Pub. Utils. Comm'n*, 2024 ME 60 ¶ 33, 320 A.3d 437 (citing *NextEra Energy Res., LLC v. Me. Pub. Utils. Comm'n*, 2020 ME 34, ¶¶ 37-38, 227 A.3d 1117). The Law Court applies "a two part inquiry '[w]hen reviewing an agency's interpretation of a statute that is both administered by the agency and within the agency's expertise.'" *NextEra Energy Res., LLC*, 2020 ME 34, ¶ 22, 227 A.3d 1117 (quoting *Competitive Energy Servs., LLC v. Me. Pub. Utils. Comm'n*, 2003 ME 12, ¶ 15, 818 A.2d 1039). First, the Law Court "determine[s] de novo whether the statute is ambiguous." *NextEra Energy Res., LLC*, 2020 ME 34, ¶ 22, 227 A.3d 1117 (citations omitted). If the statute is unambiguous, the Law Court applies its plain meaning. *Id.* A statute is ambiguous only if its language "is reasonably susceptible to different interpretations." *Id.* (quoting *Scamman v. Shaw's Supermarkets, Inc.*, 2017 ME 41, ¶ 14, 157 A.3d 223.

As is discussed fully below, the Commission's decision violates an unambiguous statutory mandate and results in a decision that is irrational and unsupported by the record evidence.

B. The Commission's Denial of Good Cause Relief is based upon an erroneous interpretation of the unambiguous phrase "external delays outside of [Snakeroot]'s Control."

1. Introduction

Through the aforementioned 2019 NEB legislation "the Legislature… expanded net energy billing programs to promote the use of certain types of generation, such as solar and other distributed generation." *Industrial Energy Cons. Grp.*, 2024 ME 60 ¶ 11, 320 A.3d 43 (citations omitted). In the fall of 2021, the Legislature added several new eligibility criteria for NEB projects between 2 and 5 MW ("2021 NEB Statute"). [*P.L. 2021, ch. 107, 307 (amending 35-A M.R.S. §§ 3209-A, 3209-B effective Oct. 18, 2021)*]. These additional requirements included several retroactive deadlines[7] and deadlines that expired shortly after the effective date of the statute,[8] which deadlines are not at issue in this appeal.[9]

Of relevance here is the December 31, 2024 COD deadline. The COD deadline was imposed on Snakeroot and other developers in 2021, well after they had invested considerable time and money developing solar projects in Maine in

[7] The retroactive requirements included a fully executed Interconnection Agreement (IA) or NEB Agreement by December 31, 2020. [*P.L. 2021, ch. 107, 307 (amending 35-A M.R.S. §§ 3209-A, 3209-B effective Oct. 18, 2021)*].

[8] The amendments took effect on October 18, 2021 and set a deadline of December 31, 2021 for receipt of all local non-ministerial permits and submission of all required Maine Department of Environmental Protection (DEP) permit applications. [*P.L. 2021, ch. 107, 307 (amending 35-A M.R.S. §§ 3209-A, 3209-B effective Oct. 18, 2021)*].

[9] These amendments are not relevant to the appeal because Snakeroot undisputedly met those deadlines. [A. at 016; A. at 032, n. 17].

reliance on the 2019 NEB Legislation. Specifically, pursuant to the 2021 NEB statute:

> E. In order for a distributed generation resource to be used for net energy billing, the following must be met on or before December 31, 2024:
>
> (1) The proposed distributed generation resource must reach commercial operation by the date specified in the net energy billing agreement or by the date specified with an allowable modification to that agreement.

35-A M.R.S. § 3209-A(7)(E(1). The 2021 NEB statute did, however, provide a safe harbor for projects that were unable to meet the new deadlines. According to the good cause provision:

> An entity proposing the development of a distributed generation resource that does not meet one or more of the requirements of this subsection may petition the commission for a good-cause exemption due to external delays outside of the entity's control, which the commission may grant if it finds that, without the external delays, the entity could reasonably have been expected to meet the requirements.

35-A M.R.S. § 3209-A(7) (emphasis added). Here, the Commission's interpretation of the good cause provision must be vacated because it ignores the plain meaning of the good cause provision of the statute and the legislative intent thereof.

2. The Commission's Order renders superfluous the statutory phrase "external delays outside of the entity's control."

Although the Law Court's de novo review of an agency's interpretation of a statute that it administers gives deference to the agency, it "is not a toothless standard." *Central Maine Power v. Me. Pub. Utils. Comm'n*, 436 A.2d 880, 885 (Me. 1981). Rather,

> deference to the agency's construction must yield to the fundamental approach of determining legislative intent, particularly as is manifest in the language of the statute itself. The intent pertinent to the exegesis is that existent at the time of the statute's enactment.

Id., (citing *Mundy v. Simmons*, 424 A.2d 135, 138 (1980) (emphasis added)). Where "the statute is plain" the Law Court "give[s] effect to the unambiguous intent of the Legislature." *Guildford Transp. Industries v. Me. Pub. Utils. Comm'n*, 2000 ME 31, ¶ 11, 746 A.2d 910 (citations omitted); *see also Agro v. Me. Pub. Utils. Comm'n*, 611 A.2d 566, 569 (citing *State v. Niles*, 585 A.2d 181, 182 (Me. 1990)) (the Law Court "look[s] to the wording of the statute and the legislative objective of the statute"). "The plain meaning of a statute always controls over an inconsistent administrative interpretation." *National Indus. Constrs, Inc. v. Superintendent of Ins.*, 655 A.2d 342, 345 (Me. 1995) (emphasis added).

Here, the Law Court need not defer to the Commission's interpretation of the language because the language of the statute is not reasonably "susceptible to different interpretations." *NextEra Energy Res., LLC*, 2020 ME 34, ¶ 22, 227 A.3d

1117 (citations omitted).[10] The unambiguous language of the statute in question plainly states that a good cause exemption is available to an NEB project where deadlines were missed due to "external delays outside of the entity's control." 35-A M.R.S. § 3209-A(7) (emphasis added). The legislative objective is equally plain: to avoid penalizing projects that invested time, money and other resources into Maine projects and the Maine economy, but, due to factors beyond their control, missed a deadline that the legislature imposed *after* the project had already committed those resources.

a) *The Cluster Study Constitutes a Delay Outside the Control of Snakeroot*

The Commission's Ruling ignores the plain meaning and the unambiguous intent of the legislature. Indeed, the Commission's interpretation of what constitutes a delay within an entity's control is so broad as to render the entire good cause provision superfluous.

There is no dispute that Snakeroot timely undertook every step that was within its control. [A. at 016; A. at 032, n. 17]. In fact, Snakeroot achieved deadlines that were not imposed until long after it commenced the process for

[10] Notably, the Commission itself agrees that the good cause standard is unambiguous. *See, e.g., Order Denying Good Cause Petition of Naples Roosevelt Trail Solar 1, LLC.*, Docket No. 2021-00215 (March 2, 2022) at p. 11 ("the Commission does not consider the statutory standard requiring an exemption to be based on 'external delays outside of an entity's control' to be ambiguous or reasonably susceptible to different interpretations").

participating in the NEB program. [*Id.*] As noted, more than one year after Snakeroot began the interconnection process, the legislature added a retroactive deadline of December 31, 2020 for projects to have a fully executed Interconnection Agreement. In that same legislation, the legislature set a near-term deadline of December 31, 2021 for projects to be in receipt of all local non-ministerial permits and for submission of all required Maine Department of Environmental Protection (DEP) permit applications. Snakeroot met each of those requirements, including executing its Interconnection Agreement in compliance with the December 31, 2020, grandfathering deadline. [A. at 032, n. 17]. Satisfaction of those deadlines affirms that the Snakeroot Project was precisely the sort of facility the legislature intended to participate in the NEB Program and to find relief in the good cause exemptions.

In addition, Snakeroot timely paid the invoices that CMP issued for the upgrades. [A. at 017]. [**BEGIN REDACT**] [redacted] [**END REDACT**] In short, Snakeroot was on track to accomplish interconnection by the

statutory COD deadline because it had acted diligently and in good faith to meet all of its eligibility deadlines and to timely accomplish all interconnection requirements within its control.

Despite Snakeroot's fulfilling its obligations and timely accomplishing all that was within its control, the Commission denied Snakeroot's good cause petition. In so finding, the Commission created an additional standard that does not exist in the statute. Specifically, the Commission creates what is tantamount to a foreseeability standard when it ruled that Snakeroot was "aware, or should have been aware, that a cluster study would be required given the size of the projects and the number of projects in the proposed area." [A. at 021].[11]

The good cause standard does not, however, look to what Snakeroot knew or should have known when it filed its interconnection application. The good cause standard unambiguously allows for a good cause exemption where a delay was "due to" something external to Snakeroot and "outside" of Snakeroot's control; it does not address or implicate the knowledge or foresight of the projects.

[11] As is more fully discussed below, even if it were a foreseeability standard, the Commission's decision is not supported by the record evidence. As the first project in the queue, Snakeroot would not have been aware of the number of projects in the cluster 6 study area or their size. In addition, as the Commission notes in its order "[c]luster studies <u>have become</u> a routine part of solar developments in Maine…." [App. at 21 (emphasis added)]. The acknowledgement that such studies "have become" routine undermines the Commission's holding that Snakeroot knew or should have known about the delays because such lengthy studies were *not* routine at the time Snakeroot first entered the queue.

Here, the Commission's own discussion of the cluster study process shows that the delays were entirely beyond the control or reasonable foresight of Snakeroot. According to the Commission:

> While CMP administers the cluster studies, the record shows that CMP conducts the studies based on guidance from the ISO-NE Tariff and in direct consultation with ISO-NE. ISO-NE ultimately sets the parameters of a transmission cluster study through its Tariff as part of its oversight of the transmission grid. Notably, and unlike the … interconnection process governed by Chapter 324 of the Commission's rules, the ISO-NE I.3.9 approval process does not contain deadlines or expected timelines.
>
> In this case, many of the "delays" in the cluster study process cited by Petitioners were based on CMP estimates of timing. However, because ISO-NE oversees the cluster study, and the NEPOOL Reliability Committee gives final approval, CMP's estimates of timing, when it does not control the process, do not become delays when the estimates prove to be wrong.

[A. at 021 (emphasis added)]. Absent from the Commission's Order's description of the process for cluster studies is any reference to Snakeroot's participation in the process. This is likely because the cluster study was administered solely by CMP based upon guidance from and consultation with ISO-NE. Moreover, unlike the interconnection regulations over which the Commission has authority – Chapter 324 of the Commission's rules, for example – the cluster study approval process has no deadlines and no timelines. In other words, that process – and the amount of time it takes – is controlled entirely by entities *other than* Snakeroot. Indeed, not even the Commission has jurisdiction over the cluster study rules. If even the

Commission is unable to direct ISO-NE to conclude the cluster study process in a timely manner, surely the cluster study process is outside of Snakeroot's control.

The Commission also erred by finding that when CMP incorrectly estimated and repeatedly extended the expected study time, those extensions were not delays because CMP does not control the process. Notably, the Commission held that CMP "administers" the process and is in "direct consultation with ISO-NE" regarding the process. [A. at 021]. As such, CMP would be in a far better position to estimate the timelines and provide timelines for the project than Snakeroot. If the time estimates are inaccurate or the timeframe elongated because CMP needed additional time or ISO-NE made additional requests, neither of those factors are within Snakeroot's control.[12]

In short, nothing about the length of the cluster 6 study process was within the control of Snakeroot. Cluster studies of over two years were not part of the interconnection process in Maine when Snakeroot initially filed its application.[13]

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[12] Neither here nor below does Snakeroot suggest that CMP or ISO-NE are blameworthy. The good cause standard is not one of fault, but one of determining why a delay occurred. If additional tests are required to ensure a safe grid or tests or equipment procurement is delayed because of supply chain challenges or the volume of projects, it is not necessarily the fault of ISO-NE or CMP, but it is still a delay that is beyond Snakeroot's control. If the delay was external to Snakeroot and not within its control, then it meets the good cause standard set forth by the legislature.

[13] In fact, at the time Snakeroot filed its application, CMP was not yet routinely conducting cluster studies and certainly not requiring two plus years for its cluster studies [A. at 002, Item No. 84 (*Snakeroot Exceptions to Examiners Report Filed May 13, 2024 at Attachment 1*)]. The Commission, however, relied solely on the foreseeability of 2+ year cluster studies in Maine. [A. at 21 ("looking at the average time for cluster studies conducted by CMP in Maine")]. That reliance on foreseeability fails to support the Order because there was no standard timeline for

Moreover, at that time, Snakeroot was first in the substation queue, so it could not have been aware that other projects would cause a cluster study requirement. In addition, Snakeroot did not control CMP's formation of the cluster, the timing of the closure of the cluster, the other projects included in the cluster, or any other parameter related to the creation, administration, or work performed as part of the cluster study. From beginning to end, the cluster study was an external factor beyond the control of Snakeroot. As such, the Commission erred when it denied Snakeroot's petition for a good cause exemption by holding the cluster study was neither an external factor nor a delay.

b) *Supply chain and other procurement delays are delays over which Snakeroot has no control.*

According to the Commission's Order, extended procurement lead times are also not delays under the good cause standard. Specifically, the Commission held:

> CMP has estimated that construction of the necessary upgrades is projected to take at least two years largely based on equipment procurement lead times as provided by vendors. These lead times

cluster studies in Maine at the time Snakeroot applied. As is discussed below, as CMP engaged in more cluster studies, the studies began to take longer because ISO-NE was modifying its demands based upon the changes to the Maine grid. Consequently, the length of time for cluster studies increased while Snakeroot was stuck in the Cluster 6 study. To the extent that the Commission is applying a foreseeability standard, it should be measuring foreseeability at the time of application, not in hindsight after the delay has occurred or based upon what can only be known years into the process. At the time of application, Snakeroot could only base interconnection timelines on current experience in Maine and other states as of its application date. Using that as the baseline for foreseeability, Snakeroot reasonably expected its COD to occur long before December 31, 2024. [A. at 05, Item 27 (MREA/CCSA Testimony at pp. 6-7 and 10-11]. Thus, even under a foreseeability standard, there was a delay that was not in Snakeroot's control.

> currently represent the industry standard and obtaining the necessary equipment to complete construction sooner is not possible.
>
> The Commission concludes that these timeframes do not constitute external delays but rather represent the current process for developing and interconnecting a distributed generation facility in Maine and the state of the market. The record in this case suggests that the lead times for such equipment are not abnormal in 2024, nor unique to Cluster 06. While the lead time may have been shorter in years past, it is now an expected part of the development process.

[A. at 022 (emphasis added)]. Once again, the Commission's own language demonstrates that this is, in fact, a delay beyond the control of and external to Snakeroot.

Merriam-Webster's online dictionary (accessed November 12, 2024), defines delay as "the act of postponing, hindering, or causing something to occur more slowly than normal**:** the state of being delayed." To determine whether something is "occurring more slowly than normal," a baseline for "normal" must be set. Here, the Commission set that baseline using what is *currently* happening, not what was *expected* to happen when Snakeroot first entered the queue. By using the current conditions rather than those Snakeroot reasonably expected in 2020, the Commission essentially excises the word "delay" from the statute. [14]

[14] It cannot be stressed enough that even if there is an element of foreseeability, what was or was not foreseeable must be measured from the time the process began, not with hindsight at the conclusion of the process. When Snakeroot began this process in early 2020, none of the delays that occurred were foreseeable. If delays are measured from the time one is already aware of the

As with the length of the cluster study, if the standard is a foreseeability standard, the baseline for what is foreseeable should be at the time Snakeroot filed its application. Only from that baseline can one measure whether the foreseeable timeline was extended and, if it was prolonged, whether the reasons for the delays were within the control of Snakeroot. Here, as noted, the procurement timelines changed significantly between the time of application and the time the cluster study was approved. It is simply incongruous for the Commission to hold that no delay occurred because of "current" conditions while also noting that procuring equipment "may have been shorter in years past." [A. at 022]. If procuring equipment took less time when Snakeroot entered the queue, but the "current industry standard" for procuring equipment is now longer, that is the very definition of delay, i.e., something is now occurring more slowly than usual. If the reason for that delay is beyond the control of Snakeroot, it is grounds for a good cause exemption.

Here, there is no question that the delayed lead times are not within Snakeroot's control. A global pandemic that impacted supply chains, as well as

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delay, there could never be a delay. A flight that is schedule to depart at 2:00 is delayed if it leaves at 3:00. It does not become non-delayed if the passengers are informed of the 3:00 departure at 2:45. Similarly, if in September 2020 a project reasonably expects to be interconnected by December 31, 2024, it is delayed if the circumstances between September 2020 and December 31, 2024 push interconnection beyond that deadline. Here, the Commission applied circumstances that existed in 2023 and 2024, but not 2020, as a basis for finding that the deadline was not missed as a result of delay. That is not foreseeability, that is hindsight.

increased demand for interconnection equipment, elongated the lead times for CMP's procurement of upgrade equipment while the cluster study was pending. [A. at 31]. While these lead times for CMP to procure equipment may not be "abnormal" for 2024 or may "currently represent the industry standard," those timelines were abnormal and not the industry standard in 2020, or before that time, when Snakeroot began this process. [*Id.*] In other words, there was an external delay beyond the control of Snakeroot that elongated its interconnection the process.

In short, the Commission's misreading of the plain language of the statute and its creation of a foreseeability standard that does not exist in the statute, led it to the incorrectly conclude that a delay in the procurement timeline for the interconnection upgrades for Snakeroot is not a delay. The Commission's error was further compounded by its consideration of the state of the supply chain and procurement timelines in 2024 rather than what was expected when Snakeroot first entered the queue. As such, the Commission's decision is inconsistent with the plain language of the statute and should be vacated.

c) *Leapfrogging in the interconnection queue*

The Commission also found the projects could not have reached commercial operation by December 31, 2024 because it would take "some amount of time" to "settl[e] leapfrogging issues." [A. at 22]. Again, this is part of the interconnection

process that did not exist when Snakeroot sought to interconnect. Rather, it was the result of a Commission rulemaking, and a waiver granted by the Commission to CMP. To the extent Snakeroot, the first project in the substation queue, was delayed by leapfrogging, it was not within the control of Snakeroot.

In a nutshell, leapfrogging occurred when a smaller capacity (level 2) project filed an interconnection application at a substation where there were already larger (level 4) projects in the queue. If the level 4 projects in the queue ahead of the new level 2 applicant had not fully paid their interconnection costs, the level 2 projects were able to "leapfrog" the larger projects because those larger projects were not considered in screening the utility system capacity against the "aggregated generation" already or imminently energized. [*See* A. at 19-20, n. 8]. Importantly, the level 4 projects that were leapfrogged had not paid the full interconnection costs because CMP had sought – and the Commission granted – a waiver for the deadline to invoice certain interconnection costs. In other words, the non-payment was not within their control because CMP was granted a waiver of the deadlines for invoicing the payments. When level 4 projects were leapfrogged by a level 2 project, the level 4 projects needed to be restudied, resulting in delay. [A. at 19-20, n. 8]. Ultimately, leapfrogging resulted in numerous delays, which, in turn, resulted in waiver petitions, and restudies, which caused the Commission to amend the definition of "aggregated generation" to mitigate the "leapfrogging" issues. *See*

Maine Pub. Utils. Comm'n, Amendments to Small Generator Interconnection Procedures (Chapter 324), No. 2023-00103, Order (Me. P.U.C. Dec. 12, 2023).

Snakeroot did not control when CMP invoiced it for upgrade costs. Those deadlines were dictated by the Commission's rules and CMP's requested waiver of that deadline. Similarly, Snakeroot did not control the Commission's interpretation of what constituted "aggregated generation" that created the leapfrogging issue.[15] Once the leapfrogging issue was created, Snakeroot was likewise unable to control whether a level 2 project sought an interconnection that caused delay for Snakeroot's interconnection. As the first project in the queue at this substation, Snakeroot had no expectation that another project would be able to jump the line and delay its interconnection. Yet, a change in the interpretation of a rule and a waiver of the deadline for CMP to invoice projects, created a situation in which Snakeroot essentially lost its queue position even though it timely performed its expectations. This is yet another delay that was beyond the control of Snakeroot.

In sum, the Commission ignored the plain language of the good cause statute by creating a foreseeability standard and essentially removing from the definition

[15] Snakeroot does not dispute that the Commission is tasked with interconnection rulemaking, such as the one that altered the "aggregated generation" definition, as part of its discretion to interpret its statutory mandates, and that the Law Court will defer to the Commission on such interpretations. However, it is not the interpretation of the "aggregated generation" rule that is at issue here. What is at issue is whether the interpretation or creation of that rule created delays that were beyond the control of Snakeroot. There is no dispute that leapfrogging created delays to cluster 6 and there should be no dispute that the causes of leapfrogging were all beyond the control of the projects that were leapfrogged.

of "delay" all factors that the Commission believes Snakeroot knew or should have known. This error was compounded by using a hindsight standard to determine what was foreseeable. To wit, the Commission found that Snakeroot should have known in 2020 that cluster studies would cause lengthy delays in the process, that procurement of equipment would take longer in 2024 than it did in 2020, and that the Commission would generate a rule that allowed other generators to bump Snakeroot from its first in queue position. Not only is there not a foreseeability standard in the good cause provision of the statute, but Snakeroot also had no reason to foresee any of the issues that arose *after* its application was accepted by CMP. Given the solar development landscape that existed in early 2020, Snakeroot had every reason to believe that it could be interconnected by December 31, 2024. Ultimately, the Commission did not apply the plain meaning of the good cause provision, and, for that reason, its decision must be vacated and remanded.

C. The Commission's Ruling is unsupported by the record evidence and is an abuse of its discretion.

1. The Commission's Ruling is Unsupported by Record Evidence

a) The cluster study suffered from multiple delays that were not within Snakeroot's control.

The Cluster 6 Study faced at least nine separate delays beyond the control of Snakeroot. [A. at 8 (*MREA responses to OPA DRs 001-002, 009, and 012*)].

Although CMP initially forecast ISO-NE's I.3.9 Determination for Cluster 6 in March 2021, it did not occur until August 31, 2023. This approval occurred nearly two- and one-half years after CMP projected the cluster would receive approval from ISO-NE and more than three years after Snakeroot was forced into the study.

CMP was compelled to extend the forecasted deadline for completion of the study due to numerous additional study and re-study requirements of ISO-NE that were neither within Snakeroot's control nor foreseeable. Once again, while Snakeroot posits that foreseeability is not applicable to the good cause standard, other Commission decisions support Snakeroot's position that the delays here were both beyond its control and unforeseeable. *See, e.g. Dynamic Energy Solutions, LLC, Petition for Good Cause Exemption, Docket 2022-00014 Order (Me. P.U.C. June 1, 2022) at 6 (granting good cause relief where developer had "no reason to believe" a local moratorium on approvals of solar facility siting would impact its project development timeline)*; *BWC Pattee Pond, LLC, Petition for Good Cause Exemption, Docket 2022-00088 Order (Me. P.U.C. July 29, 2022) at 3 (concluding delay from an unforeseeable utility error in interconnection study process was outside of project's control).*

Moreover, the lengthy delay in the Cluster 6 study was also unforeseeable for CMP, and if it was unforeseeable for the owner of the interconnection system, it was surely unforeseeable for Snakeroot. According to CMP's responses to

information requests below, cluster 6 was different from prior cluster studies. This included the additional requirement for PSCAD studies, which are very time-consuming iterative analyses of changing interconnection and generation facility conditions over time. According to CMP, study results in early 2021 provided the first foresight into the increasingly complex requirements, such as PSCAD studies, for all subsequent cluster studies. Cluster 6 started precisely amidst those early 2021 changes by ISO-NE to the cluster study process. [A. at 002, Item Nos. 68 and 69 (CMP Response to Second Information Request No. 7 (filed March 8, 2024) at 3-4 ("Given the findings in recent studies in New England in early 2021, and because of the nature of the system in Maine and the extent of inverter-based resources in the area, ISO-NE stated that it may be best to assume, worst case, the need for a PSCAD study for all clusters greater than 20 MW. ISO New England subsequently required PSCAD studies in all cluster as all clusters were in areas where the already approved DER exceeded 20 MW in aggregate."))]. These changes to the cluster study process were not foreseeable by Snakeroot and were certainly not within its control. As the delays were not within Snakeroot's control and were external to Snakeroot, the Commission erred when it denied Snakeroot's good cause petition.

b) *The Commission's Ruling that the cluster study was "slightly slower" than clusters ahead of it is not supported by the evidence.*

The Commission also ruled that the cluster 6 study did not constitute a delay because it was within the average time period of cluster studies. Specifically, the Commission ruled that:

> Using two years as a benchmark reveals that while Cluster 06 moved slower than the clusters ahead of it, it was just slightly slower than the average pace by 2-3 months. This 2-3 month period, in the context of the entire cluster study, is not significant enough to constitute a delay within the meaning of the statute. For these reasons, the Commission concludes that, based on the two-year average timeframe for cluster studies in CMP territory, the overall Cluster 06 study timeline does not constitute an external delay over which the Petitioners had no control.

[A. at 021-022]. This holding is unsupported by the evidence on two grounds: first, the evidence shows that the correct benchmark is far shorter than two years; and second, even if two years is the correct benchmark, it was slower than that pace by almost seven months, not 2-3 months.

(1) Assuming that average length of cluster studies is an appropriate guide for determining good cause, the Commission's finding that the benchmark should be 2 years is unsupported by the evidence.

The Commission's holding that the benchmark for cluster studies is two years ignores the fact that cluster 6 was an outlier at the time it was being studied. [*See* A. at 002, Item No. 84 (*Snakeroot Exceptions to Examiners Report Filed May*

13, 2024 at Attachment 1)].[16] Indeed, before cluster 6 was completed, CMP completed the studies for clusters 1-5 and 16. The average length of the studies of clusters 1-5 and 16 was 1.44 years (i.e. 17 months), *not* two years. [*Id.*][17] In other words, during the time that Snakeroot was in the cluster study, the average time period for clusters was *not* two years. In fact, even if the two cluster 6 studies are included, the average length of time for cluster studies 1-5, 16 and both cluster 6 studies is 1.75 years.[18] Thus, even when the average is skewed with the addition of cluster 6, the average is still below the 2 years that the Commission used as a benchmark.[19]

If the Commission is going to apply a foreseeability standard, that standard should be based upon information available to the projects at the time their applications are accepted. It not, anything that happens after a project enters the queue is essentially deemed to be within its control. At the time Snakeroot entered the queue, multiyear cluster studies were not an expected or typical element of the

[16] CMP provided the cited document as evidence in non-confidential agency records in another good cause petition, of which the Commission was permitted to take official notice. *See* 65-407 C.M.R. ch. 110 § 10(E).

[17] Cluster 1 took .59 years, cluster 2, took 1.29 years, cluster 3 took 2.32 years, cluster 4 took 1.4 years, cluster 5 took 1.46 years, and cluster 16 took 1.57 years. The average for those clusters is 1.438 years (.59+1.29+2.32+1.4+1.46+1.57= 8.63/6 = 1.438)

[18] Cluster 6 was divided into two parts. The first part received I.3.9 approval on May 31, 2023 after 849 calendar days in study. The second part, which is the part in which Snakeroot was placed, took 941 days and, as of the date it received I.3.9 approval, was the longest cluster study by nearly 100 days.

[19] It was only after clusters 1-6 and 16 ended that the average increased to two or more years. Since the studies of clusters 1-5, 6 and 16 ended, CMP has completed studies of clusters 7-15, each of which took more than 2.5 years.

Maine interconnection process. Moreover, even if they were an element, the evidence shows that before the cluster 6 studies concluded, the average time for cluster studies was 1.4 years. Even with cluster 6 included, the average time was 1.75 years.

Thus, even using the Commission's foreseeability standard, the subject cluster was not "just slightly slower than the average pace by 2-3 months." The subject cluster took 2.58 years, or 30.96 months. As the average pace of the clusters ahead of cluster 6 was 1.4 years, it was more than one year slower. Surely a cluster process whose elapsed time is in excess of one year slower than those ahead of it is sufficiently "significant enough to constitute delay within the meaning of the statute." As that delay was beyond the control of Snakeroot, the Commission erred by denying the good cause petition.

(2) Assuming, *arguendo*, that the two-year benchmark is correct, the Commission's finding that there was only a 2-3 month lag is unsupported by the evidence.

Even if the two-year benchmark were correct, which Snakeroot refutes, the Commission's decision is unsupported by the evidence. According to the Commission, using a two-year benchmark precludes a showing of good cause because a "2-3 month period, in the context of the entire cluster study, is not significant enough to constitute delay." [A. at 022]. Contrary to the Commission's finding, the evidence shows that the subject cluster study took 2.58 years. [A. at

002, Item No. 84 (*Snakeroot Exceptions to Examiners Report Filed May 13, 2024 at Attachment 1*)]. Again, 2.58 years is 30.96 months. In other words, the lag is nearly seven months beyond the Commission's own benchmark. As seven months is more than double the 2-3 months lag that the Commission found not significant enough to constitute delay, the Commission's ruling is contradicted by the record evidence. Given that the Commission did not identify the demarcation between what is and is not "significant enough to constitute a delay," its decision cannot be sustained on the record before this Court. [20]

Thus, the Commission's decision is not supported by the evidence. The cluster study at issue here endured numerous external delays that resulted from factors not within Snakeroot's control. Moreover, its benchmark for determining the average length of a cluster study is unsupported by the evidence because there was not an average length of a cluster study at the time Snakeroot applied, and the few prior studies were far shorter than the two-year benchmark applied by the

[20] The Commission's error calculating the benchmark for cluster studies and its miscalculation of the lag using its own benchmark are problematic for its alternative holding. According to the Commission, even if it "took the position that a 2-3 month delay occurred, Petitioners still have not demonstrated that, but for the delay experienced by Cluster 06 projects, Petitioners could have reasonably expected to reach the December 31, 2024 commercial operation milestone set forth in the statute." [A. at 022]. Even if Snakeroot might have missed the COD deadline without a 2–3 month delay in the cluster study, that holding is problematic when the correct benchmark of 1.4 years is considered. With a 1.4-year benchmark, the delay exceeds one year, meaning the project had time to interconnect. Similarly, even if the Court accepts the 2-year benchmark, which is unsupported by the evidence, the evidence undisputedly shows that the delay was closer to 7 months, not 2-3 months.

Commission. Finally, even if the Commission's benchmark were accurate, which Snakeroot denies, the evidence shows that the cluster 6 study took seven months longer than the benchmark, not the two to three months upon which the Commission based its denial of the exemption. As the record both fails to support and contradicts the basis for denying relief, the Order should be vacated and remanded.

2. The PUC abused its discretion by denying Snakeroot relief while waiving the deadline for commercial operation of other facilities in substantially similar circumstances.

Just days before it denied Snakeroot's good cause petition, the Commission granted a petition for Pembroke Solar by Order dated June 20, 2024. *Order Granting Good Cause Petition of Pembroke Solar, LLC,* Docket No. 2023-00304 (June 20, 2024) (the "Pembroke Solar Order"). In the Pembroke Solar Order, the Commission found that significant utility equipment procurement delays constituted delays that were beyond the control of Pembroke Solar, which had commenced construction and could have achieved COD by the December 31, 2024 deadline, but for the procurement delays. *Id.* at pp. 6-7. Since that time, the Commission has granted some good cause petitions, while denying others despite their very similar records of delays. The lack of any clear definition of what does or does not constitute an external delay and where the line is drawn for procurement delays that are or are not external, is arbitrary and capricious.

For example, Snakeroot, like Pembroke Solar, had commenced substantial construction. [A. at 017]. Snakeroot, like Pembroke Solar, could have achieved mechanical completion and energization by the December 31, 2024, deadline, but for the utility study and upgrade delays. [*Id.*] The upgrade delays to the Snakeroot Project include delays in procurement due to supply chain issues, much like those at issue in Pembroke. Comparison of the circumstances of the Pembroke Solar facility and the facts in this case demonstrate that the Commission abused its discretion by denying Snakeroot's Petition while granting Pembroke Solar relief from the deadline for commercial operation. The Commission applied different standards that depart from the statute's plain meaning to deny Snakeroot's petition based on circumstances that are patently similar to the external delays to interconnection that supported the Pembroke Order granting relief. Such starkly divergent orders based on the very similar factual circumstances and purported standards for relief is the very definition of an abuse of discretion.

Similarly, the Commission has held that delays caused by utility grid construction or requirements that were unforeseeable at the initiation of project development justify good cause relief. [*See Order Granting Good Cause Petition of TPE Development, LLC, Docket No. 2022-00365 (June 7, 2023) ("TPE Good Cause Order") at 3-4; Order Granting Good Cause Petition of Loki Solar LLC, Docket No. 2021-00246 (March 2, 2022) ("Loki Solar Good Cause Order") at 2-5*.

In the TPE Good Cause Order, the CMP Non-Wires Alternative Upgrade qualified as a but-for cause for missing the COD deadline because the construction timeline was going to encompass several years. [*Id.*]. Similarly, the Loki Solar Good Cause Order determined that a Versant substation rebuild delay also constituted an external delay supporting relief from the 2021 NEB Statute's eligibility deadlines. [*Loki Solar Good Cause Order at 5*].

Here, ISO-NE reliability standards require interconnection upgrades that will take two years to construct and will prevent any commercial operation by Snakeroot's Project in 2024. According to Version 9 of the Cluster 6 Study Report ("Cluster Report"), the Project must await the completion of a capacity bank (or "CAP-BANK") substation upgrade before commencing operation. CMP has stated that it cannot complete the CAP-BANK upgrade until late 2025. [*Cluster 6 Study Report at v, 56*]. The Commission's denial of good cause here, when it found good cause in the similar circumstances faced by TPE and Loki, is an abuse of discretion and creates an arbitrary and capricious standard.

VI. **CONCLUSION**

For the reasons discussed herein, the Order of the Public Utilities Commission does not apply the plain language of the subject statute, is not supported by the evidence, and is an abuse of discretion. For these reasons it

should be vacated and remanded to the Commission, together with such other and further relief as this Court deems appropriate.

Dated at Portland, Maine this 13th day of November 2024.

Jonathan M. Dunitz, Bar No. 007752
Hans C. Eysenbach, Bar No. 006015
Attorneys for Appellants Snakeroot Solar, LLC

VERRILL DANA, LLP
One Portland Square
Portland, ME 04101
(207) 774-4000

CERTIFICATE OF SERVICE

I, Jonathan M. Dunitz, hereby certify that I have this day caused two copies of the foregoing Appellants' Brief to be mailed by U.S. Mail and provided a courtesy copy by electronic mail to counsel of record as follows:

Daya J. Taylor, Esq.
Maine Public Utilities Commission
18 State House Station
Augusta, ME 04333-0018
Daya.Taylor@maine.gov

Richard P. Hevey, Esq.
Maine Office of the Public Advocate
112 State House Station
Augusta, ME 04333-0112
Richard.P.Hevey@maine.gov

Katherine McDonough, Esq.
Avangrid/CMP
18 Edison Drive
Augusta, ME 04330
Katherine.mcdonough@avangrid.com

Joseph G. Donahue, Esq.
Preti Flaherty
PO Box 1058
Augusta, ME 04332-1058
jdonahue@preti.com

Dated: November 13, 2024

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Jonathan M. Dunitz, Bar No. 007752
Hans C. Eysenbach, Bar No. 006015
Attorneys for Appellants Snakeroot Solar, LLC

VERRILL DANA, LLP
One Portland Square
Portland, ME 04101
(207) 774-4000